

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs. NO: CR-15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 14

9 Transcript of Jury Trial before The Honorable
10 James O. Browning, United States District Judge, Las
11 Cruces, Dona Ana County, New Mexico, commencing on
12 February 15, 2018.

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14 Castellano, Mr Matthew Beck

15 For the Trial 1 Defendants: Ms. Amy Jacks, Mr.
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1	I N D E X	
2	EXAMINATION (CONTINUED) OF FREDERICO MUNOZ	
3	By Ms. Armijo	4675
4	By Ms. Duncan	4709
5	By Ms. Jacks	4715
6	By Ms. Armijo	4724
7	EXAMINATION OF ROBERT MARTINEZ	
8	By Ms. Armijo	4727
9	By Ms. Duncan	4796
10	By Mr. Maynard	4814
11	By Mr. Villa	4821
12	By Ms. Armijo	4830
13	REPORTER'S CERTIFICATE	4838
14	EXHIBITS ADMITTED	
15	Defendants' Y1 Admitted	4807
16	Defendants' Z16 Admitted	4804
17	Defendants' Z16 Withdrawn	4806
18	Government 244 Admitted	4729
19	Government 276 and 277 Admitted	4777
20	Government 619 through 627 Admitted	4703
21	Government 665 and 666 Admitted	4739
22	Government 686 and 687 Admitted	4793
23	Government 697 Admitted	4701
24	Government 698 Admitted	4701
25		

1 THE COURT: All right. Good morning,
2 everyone. I appreciate everyone being here and
3 ready to go on time.

4 Mr. Villa, do you want to, when the jury
5 comes in, put anything on the record? Do you want
6 to explain where Ms. Fox-Young is? Do you want to
7 just keep moving? What would be your preference?

8 MR. VILLA: I think maybe I guess I'd ask
9 the Court if the Court might just tell the jury that
10 she's home with a sick four-month-old baby and will
11 be back as soon as she can. I don't know if that
12 sounds appropriate.

13 THE COURT: I'd be glad to do it, if
14 that's what you want.

15 MR. VILLA: Yeah, I think so.

16 THE COURT: All right. So I'll do that.
17 I got a juror, Ms. May, she's the one that we bought
18 medicine for earlier in the week. She's, I think,
19 at the emergency room right now. She's got some
20 respiratory problem. She told Ms. Standridge that
21 she was having some respiratory problems. I don't
22 know if you noticed that she kind of was making a
23 mask with a handkerchief or Kleenex or something, to
24 try to be a good neighbor. But she's had a cough
25 this week. And I guess the way she described it to

1 K'Aun, it was something like -- Ms. Wild --
2 something like she's allergic to something down
3 here, and something down here is affecting her
4 respiratory wise. She asked what she should do. I
5 told K'Aun to just tell her to keep us posted. So I
6 don't know exactly where things stand at the moment.
7 That was about 34 minutes ago that I had that
8 conversation with Ms. Wild.

9 Any thoughts, Ms. Armijo?

10 MS. ARMIJO: Your Honor, I'm sorry, what
11 number is she? Where did she sit?

12 THE COURT: She's the lady in the back
13 row, the fourth juror in. She's got long blond,
14 silver hair. And she's been covering her mouth all
15 week. She's the one that my clerks went over and
16 picked up medicine for her from Walgreen's.

17 MS. ARMIJO: Your Honor, is there any way
18 we could at least see if we get an update to see if
19 she's going to make it back or not?

20 THE COURT: I can call Ms. Wild and see if
21 we can figure out what her situation is. What's the
22 Defendants' thoughts? Do y'all have any thoughts?

23 MS. DUNCAN: We agree to wait and see, get
24 an update is what to do. That's team Baca. I don't
25 speak for everybody.

1 MR. VILLA: That's fine.

2 MS. JACKS: That's fine.

3 THE COURT: Ms. Bhalla?

4 MS. BHALLA: Yes, Your Honor, so --

5 THE COURT: Let me go back -- my cellphone
6 reception is just awful here in the courtroom. It
7 just doesn't work half the time. So let me take
8 that land line in there and call Ms. Wild and see if
9 we know anything and report. If Ms. Standridge
10 comes in, you might just tell her what I'm doing.
11 She was going to go back -- I don't think she's
12 aware of what's happening to Ms. May.

13 MR. CASTELLANO: I saw her outside waiting
14 for jurors.

15 MS. ARMIJO: She's probably still waiting
16 for her. She was outside waiting.

17 THE COURT: Tell her what's going on.

18 (The Court stood in recess.)

19 THE COURT: All right. Let's go on the
20 record and let me give you a little bit of a report.
21 I haven't been able to talk to K'Aun, but she did
22 text me back and she said, "20 minutes ago she was
23 getting ready to leave to go to the emergency room.
24 She is not answering my calls just now. As soon as
25 I have another update, I will let you know."

1 Anything we need to discuss while we have
2 some time together? Anything else I can do for you,
3 Mr. Castellano?

4 MR. CASTELLANO: We may need to make some
5 use of this time, Your Honor. I do have some
6 initial corrections or suggestions for the Court's
7 proposed jury instructions. That gives us something
8 to do, if the Court wants to make use of the time.

9 I'm working off the fourth set of jury
10 instructions, so these may have been corrected in
11 the fifth set. And this is just if the Court wants
12 to. Some of these are minor typos.

13 THE COURT: This is the fifth?

14 MR. CASTELLANO: I'm working off the
15 fourth. I haven't gotten a chance to see the fifth
16 to see if they've been corrected. They may have.

17 THE COURT: Let's try it. I've got the
18 fifth set in front of me, the one that --

19 MR. CASTELLANO: I'll put it on the
20 visualizer so everyone can see what I'm talking
21 about. The first one is the Court's instruction
22 number 3. I just corrected the name Daniel instead
23 of David Sanchez.

24 THE COURT: All right.

25 MR. CASTELLANO: What was it, instruction

1 number 5, I just added Ss after the word inference
2 in two places. Are you permitted to draw reasonable
3 inferences.

4 THE COURT: So you added Ss to it?

5 MR. CASTELLANO: Correct.

6 THE COURT: Where is the second one.

7 MR. CASTELLANO: Both on the same line,
8 Your Honor.

9 THE COURT: I see it. All right.

10 MR. CASTELLANO: Jury instruction number
11 8. I don't know if anything needs to be done at
12 this time. This is the one that talks about prior
13 convictions of the accused. If we tie any of the
14 conviction into racketeering activity, one of the
15 other elements, it could be used for another
16 purpose. I don't know that we need to do anything
17 about it now, because I don't think those
18 convictions have been entered. But I just flag that
19 for the Court's attention. I don't think we're
20 there yet. This might change also. This is the
21 minor suggestion to move the word "immunity" on
22 instruction 11 to the next page. It's just hanging
23 there by itself.

24 THE COURT: Okay.

25 MR. CASTELLANO: Drug abusers, I think

1 virtually every cooperating witness will fit this
2 list. So I was adding names.

3 THE COURT: Why don't you give me the
4 names at the present time?

5 MR. CASTELLANO: Yes. And I didn't list
6 the drugs they had used. It just says drug user so
7 I figured that the parties could argue that. The
8 first is Javier Rubio, known as BB; the next is
9 Manuel Jacob Armijo; Jerry Armenta; Mario Rodriguez;
10 Lupe Urquizo has not used in a number of years, but
11 he did admit to having a bad experience with drugs
12 so he had used drugs in his past.

13 THE COURT: Who is that next --

14 MR. CASTELLANO: Lupe Urquizo, also known
15 as "Marijuano." We can add to that list. Jerry
16 Montoya who has testified; and Gerald Archuleta.
17 And I may be forgetting a few at this point, but
18 I'll try to update the list, but I think virtually
19 all cooperating witnesses will have used drugs at
20 some point.

21 MR. VILLA: Your Honor, I would add David
22 Calbert and Timothy Martinez.

23 MR. CASTELLANO: I agree.

24 MR. VILLA: Did you get Jerry Montoya?
25 I'm sorry.

1 MR. CASTELLANO: I did.

2 MS. DUNCAN: I was going to say Julian
3 Romero.

4 MR. CASTELLANO: Agreed.

5 Instruction number 18 we haven't really
6 referred to a racketeering statute just the term so
7 I just recommended the word the bits not a big deal.
8 So it reads use of that term in the statute.

9 THE COURT: Instead of this just put the?

10 MR. CASTELLANO: Yes. I haven't finished
11 looking at instruction 19 yet in terms of the counts
12 I think the Court is going to renumber the counts is
13 that correct.

14 THE COURT: That was my thoughts. It
15 didn't seem to me to help anybody but I could be
16 convinced otherwise to have a bunch of different
17 numbers out there. It seems to me to just renumber
18 them so I had been doing that throughout.

19 MR. CASTELLANO: I didn't track that.
20 That would be fine.

21 THE COURT: Remove the S from the second
22 paragraph for any person?

23 MR. VILLA: Your Honor, I was a little
24 concerned about the renumbering, we went back
25 through the real-time to see if you don't mind if I

1 sit do you.

2 THE COURT: No Villa to see if anybody had
3 referred to the counts and at least the real-time
4 didn't reflect it. But of course the real times not
5 proved like a transcript. So that's one
6 consideration and the other is I think there may be
7 issues entering the verdicts with CM/ECF if it's a
8 different count. That may just be an administrative
9 thing.

10 THE COURT: I can check with Ms. Wild on
11 that. I've done this so many times in the past,
12 where I've renumbered indictments, that she's
13 never -- renumbered counts, she's never identified
14 that as a problem for me. But I'd been glad to
15 check on it. If it's a clean transcript and it's a
16 clean -- it's okay on the CM/ECF, are you
17 comfortable with just number 1 through 5?

18 MR. VILLA: I think so. Like I said, we
19 went back through the real-time when we saw this in
20 the Court's proposed instruction and didn't see it
21 from anybody's opening statements or things like
22 that. But if anybody who gave an opening thinks
23 they said something different, that would be my
24 hesitation.

25 THE COURT: Okay. We can look at the

1 preliminary instruction. I don't think we used
2 numbers at all in the preliminary instruction.

3 MR. VILLA: I don't think you did.

4 THE COURT: Okay. Well, I'll check with
5 Ms. Wild on that. I don't think there is a problem
6 or she would have probably told me years ago, but
7 I'll double-check.

8 MR. CASTELLANO: Next is on jury
9 instruction 20. I just ask the Court to replace the
10 word "and" with the word "or." The statute only
11 requires proof that it's one or the other.

12 THE COURT: Any objection to that from the
13 defendants?

14 MR. VILLA: Judge, I'll double-check the
15 statute, but I think Mr. Castellano might be
16 correct.

17 THE COURT: Yeah, I think he's right on
18 that.

19 MR. VILLA: Since we're on this one, I had
20 a concern about using the other co-defendants in
21 this instruction as well as using monikers, but I
22 haven't discussed that with my co-counsel.

23 THE COURT: Well, y'all did address it in
24 your instructions. If you look at the next
25 instruction, this is the way y'all proposed dealing

1 with it, and so I included your alternative language
2 there. I have just reviewed the charges brought by
3 the it Grand Jury through an indictment. In this
4 case, the only defendants on trial before you are --
5 so I think that instruction was one of the ones that
6 y'all proposed.

7 MR. VILLA: Yeah, I guess I go both ways
8 on it. So maybe my colleagues can think about it,
9 but it's just something I flagged.

10 THE COURT: If we end up taking it out of
11 the indictment, then we probably need to eliminate
12 this instruction. There is not much need for it
13 unless we're going to leave of the names in as we
14 have.

15 MR. CASTELLANO: The reason I like the
16 names in is it reminds the jury of who the
17 characters were in the story for each of these
18 counts. So I think it serves as a reminder of who
19 was involved in each of these counts.

20 THE COURT: Let me take a quick look. Let
21 me grab the defendants' documents and make sure.

22 We took out all the surplusage, so I sort
23 of granted the defendants' objection to that, so
24 took that out. That was a big objection in your
25 objections, then as to instruction number 4. I'm

1 going to have to remind myself as to exactly what
2 the United States instruction number 4 was.

3 MR. MAYNARD: Judge, just a thought about
4 instruction 20 and how it should be worded, and
5 where the cooperators' names should be in there
6 explicitly. And I think there is an objection to
7 that, because the jury is not to judge their guilt
8 or innocence. They're just to judge the guilt or
9 innocence of the defendants. And in the indictment
10 and they've already pled and their status is not
11 this jury to decide except the truth or the falsity
12 of their testimony.

13 THE COURT: Well, it's a little tricky. I
14 mean, they are charged with conspiracy, so it's, it
15 changes a little bit when conspiracy is charged and
16 when aiding and abetting is charged, so I'm not sure
17 we can say with a blanket that they can't consider
18 those other people. We have to work very carefully
19 to make sure we tell them what they can consider what
20 they can't consider. But with aiding and abetting
21 and conspiracy and to a certain degree, even with
22 racketeering and enterprise, it's not a blanket
23 situation like it is in some cases.

24 Do y'all happen to have -- the Government
25 happen to have its instruction number 4? I tried to

1 be very careful in numbering. Oh, I see it. All
2 right. Well, I guess it dealt with the indictment
3 but I don't have it in front of me. Anyway, this
4 was the defendants' objection to number 4. The
5 defendants object to this instruction as it
6 references others who were not indicted but not on
7 trial defendants suggest an alternative to this
8 instruction one that reads: I have just reviewed
9 the charges brought by the Grand Jury through
10 indictment. In this case, the only defendants on
11 trial before you are Daniel Sanchez, Anthony Ray,
12 Christopher Garcia, Carlos Herrera, and Rudy Perez.
13 The Government's proposed language inadvertently
14 highlights the concern that the proposed instruction
15 purportedly seeks to avoid. Those concerns are
16 adequately addressed by other instructions.

17 So think about it. I mean, I'm using what
18 y'all put in your objections. I adopted that
19 instruction. But if you want to go a different
20 direction, let me know. I'm kind of like the
21 Government, it seems to me it helps everyone to have
22 a list there of the different conspiracies, and then
23 having the names that are there. We don't have them
24 bolded we just have the defendants bolded. Then we
25 come back with the defendants' instruction that the

1 only people on trial are those four. All right
2 we'll give that some thought cast.

3 MR. VILLA: Judge, I just would add you
4 know that lead in instruction that Mr. Castellano's
5 number 20 on the fourth proposed it's actually 22
6 now on the fifth proposed. You know whether we take
7 the defendants out from the what the indictment
8 charges or not excuse met other defendants out, I
9 kind of still like that first paragraph I yeah, I
10 think y'all may have written that, that may be the
11 reason like it. I think I pulled it out of the
12 something that y'all had proposed. So you know
13 we're saying the twice we're saying it at the
14 beginning when we read the indictment and then we're
15 saying the again then we're done with the
16 indictment. So I think it's clear to the jury.

17 MR. VILLA: And I guess it dovetails with
18 another issue that I thought about, which is the
19 cover of the Court's fifth proposed jury
20 instructions includes every defendant.

21 THE COURT: The cover never goes back to
22 the jury.

23 MR. VILLA: So we won't see all the
24 defendant listed out?

25 THE COURT: We never send the cover back

1 to the jury. I think we may have done with the
2 preliminary, we did it then, but we only had the
3 four names here, and we did it because we were doing
4 something a little different and we wanted to make
5 sure it was clear but the final set we won't put the
6 cover sheet on there at all.

7 All right. Mr. Castellano.

8 MR. CASTELLANO: I just recommended moving
9 the heading Count 2 to the next page. That's on the
10 same instruction.

11 THE COURT: Okay.

12 MR. CASTELLANO: And then for the rest of
13 the instruction I recommended the same thing,
14 changing the ands to ors in the indictment. I think
15 as well as be consistent with the Court's elements
16 instruction. Those are ors in the instructions.

17 THE COURT: If you want to turn the page.

18 MR. CASTELLANO: Actually, I should add
19 one more. It should say maintaining or increasing,
20 sorry, on each of those.

21 THE COURT: Do you want to push that up.
22 So you've got three ors in that last paragraph?

23 MR. CASTELLANO: That's correct. And
24 probably all those should read the same way. I
25 probably overlooked it in a few spots.

1 THE COURT: Okay. That's only paragraph
2 that has. What do you have in that one at the top?
3 Does that have two of them?

4 MR. CASTELLANO: Each paragraph should
5 have similar language, tracking the statute, so in
6 each of those cases those should be ors rather than
7 ands.

8 THE COURT: So you've got three in the
9 first and three in Count 3.

10 MR. CASTELLANO: It should be three
11 throughout in each of those paragraphs.

12 THE COURT: Go back to Count 1. Did you
13 just have one in Count 1?

14 MR. CASTELLANO: I probably did. I had it
15 in two places and missed the third, which the third
16 would be what I'm circling here, the word and should
17 be or.

18 THE COURT: Okay.

19 MS. DUNCAN: Your Honor, before we pass on
20 count, I haven't discussed it with the other
21 defendants this, but I'm wondering rather than using
22 the alleged victims initials, we should be using the
23 names. Nobody has referred to Javier Molina as JM.

24 MR. CASTELLANO: That's fine, Your Honor.

25 THE COURT: So in Count 1 put Javier

1 Molina.

2 MR. CASTELLANO: I agree. And that's
3 consistent with the evidence.

4 THE COURT: Do we use JM in the body?
5 Yeah, it's down in the next to the last line, isn't
6 it?

7 MR. CASTELLANO: Yes.

8 MR. VILLA: And it's in the heading right
9 underneath Count 1.

10 THE COURT: Same two places on Count 2.

11 MR. CASTELLANO: Yes.

12 THE COURT: Okay.

13 MR. CASTELLANO: Then Count 3 would refer
14 to Julian Romero.

15 THE COURT: What's Santistevan's first
16 name?

17 MR. CASTELLANO: Dwayne. D W A Y N E. If
18 I remember Gregg is G R E G G. Gregg Marcantel.

19 THE COURT: Okay.

20 MR. CASTELLANO: And then in instruction
21 22, one of the elements instructions, I think we
22 correctly have the word or in there.

23 THE COURT: Let me go back to Count 5 or
24 Count 4. Did I need to put some ors in there?

25 MR. CASTELLANO: Yes, sir, the same three

1 places.

2 The end of Count 5 also has the initial is
3 GM, and we can substitute his full name.

4 THE COURT: Okay.

5 MR. CASTELLANO: Then in instruction 22, I
6 believe the elements instruction correctly has the
7 ors in there. So I don't think we need to touch
8 that one. And in instruction -- at least the old
9 instruction 25; I'm not sure about renumbering --

10 THE COURT: It's the third element.

11 MR. CASTELLANO: Yes.

12 THE COURT: Okay.

13 MR. CASTELLANO: I think on this
14 instruction it just refers to the killing of Javier
15 Molina. But this element refers to enterprise or
16 racketeering activity conducted by the enterprise
17 itself. So on this element it should be any
18 racketeering act done on behalf of the enterprise.
19 So it could be any murder, any drug trafficking.

20 So I guess what we could do in this
21 instruction, rather than listing every single murder
22 that came out, which is a possibility is we could
23 just say that the -- you can consider whether the
24 crime of murder was committed on behalf of the
25 enterprise -- actually whether the enterprise

1 engaged in racketeering activity, to include murder
2 and drug trafficking and intimidation of a witness.
3 Because here we only have one murder, but it
4 doesn't -- the Javier Molina murder is not the only
5 racketeering act conducted by the enterprise.

6 THE COURT: So what would you propose as
7 your first element?

8 MR. CASTELLANO: I would say, yeah,
9 because here it says that we have to prove that the
10 defendants committed the offense. I think what it
11 should say is that the enterprise engaged in
12 racketeering activity. The Government alleges
13 things such as murder and robbery, obstruction of
14 justice, tampering with witnesses. Then I think
15 what we'd give them is the elements of each of those
16 offenses. And we could do one of two things. We
17 could list every single act that was done or the
18 parties could just argue and highlight which murders
19 it was.

20 For example, the Matthew Cavalier murder
21 was a murder conducted on behalf of the enterprise.
22 So any murder that the enterprise conducted or was
23 involved in would count as the enterprise engaging
24 in racketeering activity. So this is different from
25 RICO in that the enterprise has to engage in the

1 activity not the individuals.

2 THE COURT: What do you want that first
3 element to read? What do you want the first element
4 to say?

5 MR. CASTELLANO: Someone killed --

6 MS. JACKS: A human being.

7 MR. CASTELLANO: -- a human being, or a
8 victim. Sure. And then the second part would be
9 the killing was done with deliberate intention to
10 take away the life of that person, or the human
11 being, whatever word we substitute there.

12 THE COURT: Okay.

13 MS. JACKS: I think that's right. But I
14 also agree with Mr. Castellano that the defendants'
15 name should be removed from that lead-in paragraph
16 and have someone -- a member or associate of
17 enterprise. I mean, it's the racketeering
18 enterprise.

19 MR. CASTELLANO: I agree. I think it
20 should say something like that.

21 THE COURT: All right. Give me the
22 language that you want.

23 MS. JACKS: A member of the racketeering
24 enterprise.

25 MR. CASTELLANO: A member or associate of

1 the racketeering enterprise committed the offense as
2 defined by law.

3 THE COURT: And it is as defined by state
4 law in this case, because it's murder and those sort
5 of things.

6 MR. CASTELLANO: It could be state or
7 federal law. For example, we also have the 18 USC
8 Section 1512 and Section 1513. Those are the
9 witness intimidation status. And there is also
10 the -- we charged the federal drug traffic and
11 conspiracy status. So it could be under state or
12 federal law.

13 THE COURT: Okay. So just take out
14 "state."

15 MR. CASTELLANO: Yes, I would say either
16 say as defined by law or defined by state or federal
17 law. I'm fine with removing the word state.

18 MR. VILLA: And, Your Honor, it lists the
19 defendants names in the second paragraph as well as
20 the third paragraph. And I think maybe to be
21 consistent we change both. So the second paragraph
22 could read the Government has charged against or has
23 charged that the SNM engaged in multiple acts of
24 racketeering activities.

25 THE COURT: Any problem with that?

1 MR. CASTELLANO: No, sir. I think that's
2 fine.

3 THE COURT: Has charged that. Okay.

4 MR. CASTELLANO: I think we have something
5 similar at the bottom of the page for drug traffic
6 we have me, prospect or associate of the SNM
7 knowingly and intentionally possessed a controlled
8 substance as charge and I think that's what we're
9 looking for is that some member, associate, or
10 prospect of the enterprise engaged in this activity.
11 I think the next one is correct.

12 THE COURT: Okay.

13 MR. CASTELLANO: I know the Court has been
14 asking for a list of the controlled substances. So
15 I know for sure cocaine, heroin, Suboxone,
16 marijuana, and methamphetamine. I don't know if the
17 jury knows the difference. People have mentioned
18 rock and powdered cocaine. There is rock and powder
19 cocaine. I don't know if we need to differentiate
20 or not. I was just reminded, we have had specific
21 testimony of crack cocaine, so we could include both
22 crack cocaine and either cocaine, or powder cocaine
23 would be the other way we could differentiate
24 between the two forms of cocaine.

25 THE COURT: Okay. My phone is dinging, so

1 I'm keeping it on so when Ms. Wild comes up, I don't
2 miss it.

3 MR. CASTELLANO: So I think what's going
4 to happen with this instruction is we may have to
5 add additional elements or offenses as they come up.
6 So, for example, if there is an example of witness
7 intimidation, which I think there will be at least
8 one or two examples, we'll have to instruct the jury
9 on witness tampering or possibly obstruction of
10 justice. So whatever the evidence shows in terms of
11 racketeering activity, we'll have to give them the
12 elements and say this is what the Government proved
13 that the enterprise did. So we may have to actually
14 add additional elements to this instruction.

15 I'm looking at instruction number 26 from
16 the fourth draft. I saw that Christopher Garcia's
17 name was included in the fourth element.

18 THE COURT: This is the fourth element,
19 okay.

20 MR. CASTELLANO: And a typo in the next
21 paragraph. It should be each -- just missing a
22 letter E.

23 THE COURT: All right. In the fifth draft
24 I think we caught Christopher Garcia, so I think
25 he's out.

1 The next one is four lines down. Each.

2 All right. I did not catch that one.

3 MR. CASTELLANO: I haven't looked closely
4 at the dates. I just flagged this so I can go back
5 and look at the dates for on or about.

6 THE COURT: What is that?

7 MR. CASTELLANO: That's the third
8 paragraph.

9 THE COURT: Yeah.

10 MR. CASTELLANO: That's a signal for me to
11 go back and check the dates.

12 THE COURT: Okay.

13 MR. CASTELLANO: I don't have anything on
14 this one yet. This is the old instruction 31. It
15 was the aiding and abetting instruction. We had
16 submitted the Fifth Circuit instruction. But we can
17 argue about that later.

18 THE COURT: What's your problem with the
19 Tenth Circuit one?

20 MR. CASTELLANO: I never liked the Tenth
21 Circuit instruction because it says that someone
22 else committed the crime. And if you're guilty of
23 aiding and abetting, you could be a principal who
24 ordered the crime and you, by law, also committed
25 the crime. So it gets kind of confusing with the

1 fact that we say someone else committed the charged
2 crime. If they're guilty of aiding and abetting,
3 they also committed the charged crime. So that's
4 always one thing I haven't liked about the Tenth
5 Circuit's instruction. So we can just revisit that.
6 I don't know if we have to decide that today.

7 On instruction 32, it's a standard
8 instruction, but it's another one I think we should
9 look more closely at, when it talks about the
10 defendants not being guilty or not being on trial
11 for any other acts, conduct, or crime not charged in
12 the indictment. There are other acts which could
13 prove other elements of the offense.

14 So, for example, on -- there is testimony
15 that Daniel Sanchez attempted to murder another
16 Sureno. And so that could be a racketeering act
17 committed on behalf of the enterprise, and it could
18 be used against him to prove an element. So it may
19 need to be a modification of this instruction.

20 THE COURT: I think they got renumbered in
21 the fifth. Let me see if I can find yours before
22 we --

23 MR. CASTELLANO: They were about two off
24 from what Mr. Villa mentioned earlier, so it might
25 be two instructions over.

1 THE COURT: This is the defendants'
2 proposed number 21.

3 MR. VILLA: It's 48, Your Honor, in the
4 fifth proposed.

5 THE COURT: Which one?

6 MR. VILLA: This instruction 32 in the
7 fourth proposed is now 48 in the fifth proposed, I
8 believe.

9 THE COURT: Here's what I did on that: If
10 you have the fifth set up in front of you. This is
11 sort of addressing what Mr. Maynard was raising a
12 minute ago. The last portion there is the question
13 of the possible guilt of others should not enter
14 your thinking as you decide -- we should take that
15 each out -- whether Mr. Sanchez, Mr. Back, Mr.
16 Herrera, Mr. Perez have been proved guilty of the
17 crimes charged. This is what I added -- and I add
18 this often in aiding and abetting and conspiracy
19 cases and I think it would work for racketeering as
20 well -- comma, "unless I expressly charge you
21 otherwise." So I've had that work in the past, that
22 unless they hear otherwise from us, they can't
23 consider other people's crimes and conduct. But if
24 we expressly tell them they can, and we will
25 probably in the conspiracy charges, and explaining

1 racketeering, then they have it.

2 So what was your proposal?

3 MR. CASTELLANO: I just put a note here
4 that, "though other acts could be used to prove
5 other elements". And so --

6 THE COURT: This is the way I've dealt
7 with it in the past. It seems to have worked. It
8 tells us as we go through that we're going to tell
9 these jurors as a general rule they can't consider
10 the acts of other people, but we do know that in a
11 case like this, they can consider it, and so we've
12 just got to be careful to expressly tell them when
13 that is.

14 MR. CASTELLANO: I agree. So, for
15 example, any of the murders committed by other
16 members of the enterprise, which is I think the
17 third element, would count against these defendants
18 as it addresses the fact that the enterprise engages
19 in racketeering activity.

20 THE COURT: Yeah, I would think that
21 instruction is an expressly otherwise instruction.

22 MS. JACKS: Your Honor, I have a comment
23 on the same instruction, but a different portion.

24 THE COURT: Let me give you an update on
25 Ms. Wild -- K'Aun has just tried to reach Ms. May,

1 and no answer. So that's where we are. If anybody
2 decides to do something else.

3 Go ahead, Ms. Jacks.

4 MS. JACKS: The language that starts, the
5 third paragraph, "the question of the possible guilt
6 of others should not enter your thinking as you
7 decide whether each, Mr. Sanchez, Mr. Baca, Mr.
8 Herrera, and Mr. Perez has been proved guilty of the
9 crimes charged." I think that's really an
10 overstatement, because the question of the guilt of
11 others has certainly been brought up repeatedly with
12 respect to the benefits and the motivation that the
13 Government witnesses may have to testify falsely.

14 THE COURT: Well, I consider this kind of
15 y'all's instruction. This is -- so I'm amenable to
16 probably doctoring it. I think I probably addressed
17 Mr. Castellano's concern. So this was a, I think
18 what y'all did is split these up, and so I think
19 this was y'all's instruction number 21 and your
20 instruction number 5.

21 MS. JACKS: So I think what we need to do
22 is, among us, figure out a fix for that issue.

23 THE COURT: Okay. But I consider this
24 kind of y'all's to -- I need to address the
25 Government's concern, because I think to say what

1 Mr. Maynard said is an overstatement in a case like
2 this. But I think this is how I usually address it.
3 But if y'all need something else, I'm game for it.
4 This, the Tenth Circuit instructions are a little --
5 I forget what the problem is with them, but I think
6 they give a single defendant multiple count
7 instruction, and they give a multiple defendant
8 single count instruction, but they don't give a
9 multidefendant multicount instruction. So every
10 time we have a case like this, we all have to work
11 to get it just right. But I'm game for listening.

12 MR. CASTELLANO: I would leave this
13 instruction as is, and then point the jury to the
14 instruction on credibility of witnesses because
15 that's where you can point out the bias, but we we
16 can talk about it but we'll probably ask that this
17 instruction.

18 THE COURT: I actually think that's the
19 way I've done it in the past. And if you notice on
20 the credibility of witnesses, there is a lot of
21 redundancy in there, and it will give you plenty of
22 opportunities to either put the jury instruction in
23 front of the jury offer if you want to do something
24 tailored to this case, those are some places where
25 there is redundancy.

1 MS. JACKS: I agree with those comments.
2 I just don't like it when the instructions are
3 internally potentially conflicting, given how
4 closely some jurors might look at them.

5 THE COURT: Yeah, I don't want to do that
6 either.

7 MR. VILLA: Your Honor, I would just say I
8 think I like the Court deals with it as opposed to
9 Mr. Castellano. And one potential solution to what
10 Ms. Jacks has pointed out, in that second paragraph
11 after the last sentence, it says, the fact that
12 another person also may be guilty is no defense to a
13 criminal charge. We might throw in a "however," and
14 maybe it's redundant, but you know, we say something
15 to the effect of, however, the guilt of an informant
16 or cooperating co-defendant may be considered in
17 determining their credibility. Better minds can
18 think of a better sentence. But that may be the
19 place to put something.

20 THE COURT: Is that what you're thinking,
21 Ms. Jacks?

22 MS. JACKS: Something along those lines.
23 But I'm not prepared to suggest the language right
24 now. I apologize.

25 THE COURT: All right. We'll take a look

1 at it.

2 MR. CASTELLANO: We still have time. I
3 just wanted to make these initial comments so we can
4 think about it.

5 Mr. Lowry I think rightly pointed out one
6 that I missed. I think it should say, It is not up
7 to you to decide whether anyone who is not on trial
8 should be prosecuted.

9 THE COURT: Okay.

10 MR. CASTELLANO: The only suggestion I had
11 after that, because the jury has to determine the
12 guilt of each person individually, was I would
13 recommend having an individual verdict form for each
14 defendant, and that helps them to focus on each
15 defendants' guilt. So for Daniel Sanchez, I would
16 have a verdict form where I drop off Anthony Ray
17 Baca's name off there, and just have the two counts
18 related to Daniel Sanchez. And do that for each of
19 the defendants.

20 THE COURT: Well, the defendants didn't
21 like that and didn't want that, and the objected to
22 the form. And I guess my thinking my have been
23 different than what the defendants thought. It just
24 struck me as odd to have four verdict forms back
25 there. Maybe I'm just old school, because I always

1 tell them -- you know, they each have they own set
2 of jury instructions -- but there is only one
3 verdict form back there. And I just want them to
4 sit down and fill out a verdict form, not
5 starting -- you don't want to start inviting them to
6 start giving you partial verdicts. I don't know.
7 That one sheet of paper just seems -- you know, part
8 of what we do is we do our best, and then we try to
9 get them to come to an agreement back there. And
10 that was my thought. It's something magic about
11 them having to sit down and the come together and
12 fill out a verdict form, and if they.

13 Mr. Maynard.

14 MR. MAYNARD: Your Honor, on that thought
15 about verdict forms and so forth, and I don't have
16 the language what I'm going to talk about right now
17 with me, but I would prefer and I think it would be,
18 given the complexity of this case, that it would be
19 better to have a verdict form that breaks down by
20 each defendant the elements. Sort of like special
21 issues. Now, I don't have that drafted at this
22 particular time, but I do want to mention one detail
23 that I thought about with respect to the jury
24 instruction 36.

25 THE COURT: Are you on the fifth set?

1 MR. MAYNARD: On the fifth set. Where it
2 talks about separate verdicts for each defendant.
3 And I would suggest that that be moved up a little
4 bit higher, earlier in the jury instructions overall
5 because repeated lit instructions refer and name the
6 four defendants in the same sentence. And they're
7 connected by the conjunction "and." And yet, the
8 jury will be considering each of the four defendants
9 separately. And I would like to -- and again, I
10 don't have the language with me right now, but I
11 would suggest moving jury instruction 36 higher up
12 into the form, to add a sentence that states, "The
13 conjunction and is frequently used in these
14 instructions when the four defendants names are
15 listed. This does not mean or even suggest that
16 they have to lump together the considerations of the
17 four defendants together," and then follow with the
18 language, In this case, you must consider separately
19 whether Mr. Sanchez, Mr. Baca, Mr. Herrera, or Mr.
20 Perez are guilty or not guilty.

21 THE COURT: Well, I'll tell you what, the
22 defendants didn't submit one. I know it looked to
23 me like Ms. Sirignano did largely the jury
24 instructions here, but y'all didn't submit
25 interrogatories. And I guess I'll certainly listen,

1 and if you want to submit, you can. I'm not
2 inclined to do them in a case like this. It doesn't
3 seem to me that it helps us in this situation. If
4 the law was real unclear, if there was some aspect
5 that, you know, it would be really nice for the
6 Tenth Circuit to know what the jury did, if my
7 instruction was wrong, I might be more game. My
8 sense is that there is drafting issues here. And I
9 don't minimize the drafting issues, but it's not
10 like we're all beating each other up about the
11 correct law. So once we articulate it, it seems to
12 me the jury ought to just give us the thumbs up,
13 thumbs down rather than -- because -- and another
14 reason I do it is I think some of these elements,
15 they're just not big issues in dispute. They are
16 kind of phantom issues. And then other issues are
17 bigger. So then trying to pick and choose which
18 ones to put on the verdict form. So I'll certainly
19 listen, but I'm not inclined to go that direction.

20 On this specific 36, I don't like it.
21 This is the defendants' one. It seems to me this is
22 kind of state law stuff. The point of it is the
23 reason went ahead and included it and didn't reject
24 it is because there is some -- we are explaining
25 conspiracy out of the state law. And this is sort

1 of a state law concept here. But it seems to me
2 that that second sentence, again, we're beginning to
3 invite them to give partial verdicts. And there may
4 come a time in their deliberations, but the Tenth
5 Circuit makes it clear don't give that partial
6 verdict form until it's needed. And it seems to me,
7 if we start suggesting that they can give a partial
8 verdict, it takes the pressure off them too early.
9 They need to sit back there -- you guys have worked
10 hard, we've all waited for this day, they need to
11 give us a verdict, and we need to move on with our
12 lives. So I'll leave it in, but I tell you I'm not
13 a fan of it right at the moment. It seems to me
14 that it's a little early to start talking about it.
15 And we state the first sentence in so many different
16 ways in so many other instructions, I'm not sure it
17 gets us anywhere.

18 But those are my thoughts on that.

19 MR. CASTELLANO: I agree with the Court on
20 that one.

21 MR. VILLA: Judge, I don't necessarily
22 have a problem with 36 or suggestions to revise it.
23 I would be very, very opposed to any other verdict
24 form than the way it's -- I mean, maybe separate
25 verdict forms, if we get there. But special

1 interrogatories, or anything like that, I think it
2 should just be up or down.

3 THE COURT: Well, I'll kind of leave it to
4 the defendants. The Government wants separate
5 verdict forms. And I'll go along with the
6 defendants. But I gave my rationale that I don't
7 like the idea of four of them floating around back
8 there. And then, you know, I don't want them to
9 just concentrate on Mr. Sanchez and not Mr. Perez,
10 because he's number 4; they just pick up the first
11 one, or something like that. It just seems to me to
12 be a little odd. I don't think I've ever had four
13 verdict forms go back to the jury. In fact, I've
14 always said -- and I explain it to them and show it
15 to them, and tell them how to fill it out. And to
16 have four not in any particular order, just seems
17 odd to me, but --

18 MR. VILLA: I'm not opposed to one
19 document that has all four. I guess it's just the
20 idea that there is anything in there other than
21 guilty or not guilty as to each count.

22 THE COURT: Well, I'll probably hang with
23 you on that one. You might talk to Mr. Maynard a
24 little bit about it. But nobody heretofore has
25 suggested special interrogatories. So I'm not

1 inclined to go that direction.

2 MR. CASTELLANO: Your Honor, I think
3 you've talked me out of the separate verdict form
4 this morning. So I tend to toned agree with the
5 Court after hearing the Court's rationale. So I
6 think one is fine.

7 THE COURT: I mean, a lot of times I'm
8 putting my feet in the shoes of either the
9 foreperson or the jury back there, and I just try to
10 make it simple, simple, simple, if we can. If they
11 have to come back in here, they may think that there
12 is some great reward because they got three of them
13 filled out. I don't think they'll feel that way if
14 they just fill out three. I think --

15 MR. VILLA: Depends which three, Judge.

16 THE COURT: Well, it's like John Roll's
17 Veil of Ignorance; we're all on this side of the
18 veil of ignorance, right? We don't know the answer
19 on the other side.

20 All right. Anything else anybody wants to
21 discuss on jury instructions or other things? Mr.
22 Beck?

23 MR. BECK: Well, it sounds like jury
24 instruction number 36 in the fifth proposed is under
25 consideration. But I guess reading that second

1 sentence I don't understand what the word charges
2 after Mr. Perez means in that sentence. I think it
3 should probably just be removed if we're going to
4 keep this instruction at all. I don't really I'm
5 not a big fan of this instruction because I don't
6 really understands it reading through it. I
7 understand part of it. But if we're going to keep
8 it in, then I think.

9 THE COURT: Okay. I think you're right.
10 I don't know what that word is.

11 MR. VILLA: Judge, I know it's a little
12 bit early, but can we take a restroom break for
13 Mr. Perez.

14 THE COURT: Yes, let's take a recess. Why
15 don't we go about 15 minutes, because we've been
16 working Ms. Bean. We might as well take a break and
17 rest up. I'll call Ms. Wild and see if she knows
18 anything.

19 (The Court stood in recess.)

20 THE COURT: All right. We'll go on the
21 record. And let me give you a little bit of report.
22 Ms. May was not responding to telephone calls, so I
23 asked Ms. Wild to try to communicate with her by
24 text. She did get hold of her through text. She
25 has been throwing up some this morning, so it took

1 her longer to get to the emergency room because she
2 needed to clean up. So she was delayed in getting
3 there. She's at Mountain View emergency room. So
4 that's the emergency room she's at. And she is
5 waiting for a doctor. So she's not seen a doctor
6 yet. She is aware that we're waiting for her. I
7 think that freaked her out a little bit, that she
8 realizes she's got everybody on hold. But that's
9 currently where we stand.

10 What's the Government's thoughts about how
11 to proceed, Mr. Castellano?

12 MR. CASTELLANO: I think we're still
13 willing to wait a little bit longer. I hate to lose
14 a juror under these types of circumstances. And we
15 have alternates for other reasons, but if we can get
16 her back today, I'd like to wait. Otherwise, if we
17 proceed without her, I think we lose her as
18 witness -- I'm sorry, as a juror.

19 THE COURT: What are the defendants'
20 thoughts?

21 MS. BHALLA: Your Honor, we talked about
22 it. And I think we sort of agree with the
23 Government, we should wait and see what the
24 prognosis is.

25 THE COURT: All right. Well, is there

1 anything we can do while we're waiting, or y'all
2 want to just go into recess for a while? What would
3 you prefer?

4 MR. VILLA: This is just a small ask, I
5 mentioned this to Mr. Castellano. Since the Court
6 has ruled on the Rudy Perez-Billy Cordova
7 transcripts, I was asking for the Government to
8 provide me the clean transcript and audio, maybe
9 before we leave for the weekend, or if not, sometime
10 before, you know, Monday.

11 THE COURT: Will you be able to do that,
12 Mr. Beck?

13 MR. CASTELLANO: Well, we're certainly
14 going to try. Your Honor. We need to get them done
15 as well for our witness. And so I haven't had a
16 chance to look at the Court's order yet but we'll
17 have it at the office and try to make those changes.
18 So what we may be able to do is start with the
19 transcripts and get those done and then the audio
20 recordings take a little bit longer but I'm hopeful
21 we can at least guest get the transcripts finished.

22 THE COURT: Y'all are going to have to
23 help me. Where I am, because I'm working on Mr.
24 Baca's right now. Did we get the order entered on
25 yours Mr. Villa.

1 MR. VILLA: You did. And that's why I
2 asked.

3 THE COURT: I knew that I had signed off
4 on it. But I didn't know where it was. So I'm
5 working on Mr. Baca's and I think we're pretty close
6 to getting that into your hands as well, and not to
7 let the cat out of the bag. There are going to have
8 to be some additional redactions on it, so I'll try
9 to get that to you as soon as possible.

10 MR. BECK: All right. And certainly if we
11 can take a recess here I can go parse through that
12 and get with our team to start working on those
13 redactions.

14 THE COURT: Am I doing an okay job of
15 working on the right thing for you guys?

16 MR. BECK: You're doing a bang-up job,
17 yes.

18 THE COURT: Is this the order I should be
19 working on?

20 MR. BECK: Yes, you're doing it in the
21 right order. I think -- well, Mr. Cordova's,
22 probably, Herrera transcripts --

23 THE COURT: Say that again.

24 MR. BECK: The transcripts of Mr. Herrera,
25 in which Billy Cordova recorded him, I think should

1 be next before -- oh, Cordova is last? Oh, well,
2 there you go. Sorry.

3 THE COURT: So say that again.

4 MR. BECK: I won't say that last part
5 again. You're doing them in the right order then,
6 Your Honor.

7 THE COURT: Okay. Does it look like
8 Cordova is going to be last?

9 MR. BECK: Well, without disclosing any
10 confidential information on this table that I
11 haven't already disclosed, yes, it looks like
12 Cordova will be last.

13 THE COURT: Okay.

14 MR. MAYNARD: Your Honor, on the
15 Cordova-Herrera conversations, the audios, there is,
16 we recently filed an objection to at least one of
17 those transcripts and audios in its entirety because
18 I can't figure out what it about and how could it be
19 relevant.

20 Now, there is also the issue of we assume
21 that excerpts rather than the entire audios will be
22 presented to the jury and we'd like to have heads up
23 as early as possible about what excerpts the
24 Government is offer in because that also may relate
25 to rule of completeness issues and so forth.

1 THE COURT: Well, by disclosing the
2 transcripts, are you signaling that you're going to
3 offer all of it, Mr. Beck?

4 MR. BECK: I think the way we'll proceed
5 is a lot like we did yesterday, where we'll move the
6 entire audio portion into evidence, but we won't
7 play the entire portion of the audio, because a lot
8 of it isn't worth jury's time to listen to. So I
9 think we'll try to just like we did yesterday: Give
10 a little bit of advance notice to counsel so that
11 they can object to the portions we're going to play,
12 if they feel like they have some idea of that.

13 But I don't think at this point we have
14 even decided exactly which portions we're going to
15 play. But we will make that decision and we will
16 try to get with opposing counsel as early as we can
17 to give them portions. Just like yesterday in six
18 exhibits, I'm sure there was over seven or eight
19 hours of record material, but, you know, we played
20 maybe half an hour total. So --

21 MR. CASTELLANO: The other issue related
22 to that is the extent to which the defense uses the
23 selective recording as part of its defense. So if
24 they -- if the allegation is that we selectively
25 recorded through the cooperators, then that may

1 require us to introduce more material to show what
2 all was captured. So some of that we'll have to
3 play it by ear, but it depends how much they push
4 that as part of the defense, which they probably
5 will.

6 MR. VILLA: And, Your Honor, I would say
7 to that, that came up in the suppression hearing
8 with respect to Mr. Cordova, and maybe some James
9 hearings where Agent Acee testified that he told
10 them, I don't want their life stories; these things
11 have short battery lives; just want you to talk to
12 murders. So everybody from the Government's
13 perspective has agreed that they turned the
14 recordings off and on. And the Government knew that
15 when it filed its motion to the Court to reconsider
16 and have one jury. So I think the Government has to
17 live with that, if we want to bring out that this
18 happened, because it's a fact that it did happen.

19 MR. CASTELLANO: I don't dispute that.
20 I'm just saying the more we talk about it, the more
21 we may have to play, that's all.

22 MR. VILLA: I was going to say whatever
23 the Court has agreed to be cut is out, and whatever
24 is in is in, and the Government can use that
25 evidence that's in however they want. But what I

1 thought I heard Mr. Castellano suggesting is they
2 could undo some of the redactions based on how we
3 argue selective recording.

4 MR. CASTELLANO: I'm not arguing that,
5 Your Honor.

6 THE COURT: I just think they're saying
7 that they're going to play a little bit by ear. If
8 you guys pound them to death on selective
9 recordings, we're probably going to hear more
10 recordings. If you say what you said and move on,
11 they may cut more. But I'm not sure; that's trial
12 strategy and I'll just have to let y'all play it
13 out. Nobody is being restricted on either one.

14 Mr. Maynard, can you live with that? I
15 mean, you'll get it at some point.

16 MR. MAYNARD: I think that's how we have
17 to proceed given the circumstances and the nature of
18 the evidence.

19 THE COURT: All right. Anything else that
20 we can discuss or do while we're waiting for a call
21 from Ms. Wild and Ms. May?

22 MS. ARMIJO: Your Honor, and I just want
23 to be clear that when we're talking about the order
24 of the last few witnesses, it's also going to depend
25 on the availability of their defense attorneys if

1 they want to be here, so it may be that Billy
2 Cordova has to go before others if his attorney, Mr.
3 Samore, is not available the other days. So while
4 we may have a plan right now, given conflicting
5 schedules, it may change. But I think it's fair to
6 say that we are planning for early next week to have
7 if all the transcripts brought in.

8 THE COURT: Okay. All right. Anything
9 else from the Government? How about from the
10 defendants? Anything else you think we can use this
11 time to discuss? Okay. Why don't I see all the
12 counsel up here at the bench for just a second
13 before we take a break (The following proceedings
14 were held at the bench.)

15 THE COURT: See this fellow that's
16 standing up and heading out the door. I assume he's
17 the defendant's investigator?

18 MS. ARMIJO: I think he's for Cori
19 Harbour-Valdez.

20 THE COURT: I didn't want to say this and
21 embarrass him, because I don't think he meant any
22 harm, but sometime -- and I know we're all living
23 down here. I was having dinner at Garduno's and I
24 didn't know who he was. He came over and introduced
25 himself. I thought I had seen him in court. I

1 didn't know if it was one of the marshals. He's a
2 big guy -- not that all marshals are big guys -- we
3 exchanged pleasantries and stuff, and he said he was
4 very impressed with how I ran the courtroom.

5 When I got ready to pay my bill, they told
6 me it had been taken care of. And so I went, "I
7 can't do that, I'm a federal judge." And they were
8 able to reverse it. And so I paid my bill. So it
9 was paid. But, anyway, you might just tell him I
10 appreciate it, but he can't do that.

11 MR. CASTELLANO: Is that for the next
12 trial?

13 MS. ARMIJO: Against Edward Troup.

14 THE COURT: We're going to work over --

15 MR. VILLA: Suggest maybe we tell Ms.
16 Harbour-Valdez and let her address it.

17 THE COURT: I'm sure when he got his
18 credit card and he realized it was unsuccessful, he
19 probably knew that that wasn't something he should
20 probably do.

21 I've also turned down the defense
22 counsel's kisses this morning. So I'll be as pure
23 here as Cesar's wife. I think it was him. I don't
24 know. The waiter came over: That gentleman that
25 was at the bar. He's the only one that I knew. So

1 if I'm wrong I'm wrong, but I didn't know anybody
2 else in the restaurant.

3 MR. VILLA: Were you with your wife?

4 THE COURT: Yes.

5 MR. VILLA: I assume it was an admirer.

6 THE COURT: Of hers not mine. This was a
7 while back.

8 But given the fact -- in the courtroom,
9 Nora Harris is staying on my floor at the Encanto.
10 And I saw her on Tuesday morning. And I did not
11 speak to her. I went ahead and told her good
12 morning. And we were at the elevator and I told her
13 to take the elevator first. And she went down. And
14 I took the next elevator. But I did greet her, and
15 she greeted me. We were both very awkward about it.

16 MS. ARMIJO: They should have you in the
17 penthouse or something.

18 THE COURT: I'm just an old public servant
19 you know, nothing special here, you know. So those
20 are my contacts with --

21 MR. LOWRY: Watch out, that's where they
22 keep the Santa Fe police.

23 MR. VILLA: Deputy sheriffs.

24 THE COURT: Anything y'all need to put on
25 the record outside of -- a little bit private here?

1 MR. BECK: No.

2 THE COURT: Why don't we do this: Unless
3 anybody thinks of something we can do, I'm going to
4 work on these transcripts for Mr. Baca, and try to
5 get those to you. And maybe I can use that time to
6 do that. And then we'll just be in recess and round
7 everybody up. So don't feel like you have to hang
8 around here. I'll come get you if we get word.

9 MR. LOWRY: Your Honor, can we be heard on
10 those transcripts since we're up here and you're
11 working on them? I've been working with Mr. Beck
12 and I'm focusing on the reference to ADX. And if
13 the Court --

14 THE COURT: It's a mixed bag. Some of
15 them -- I sustained the ones that I'm probably going
16 to sustain are going to be the ones in which you've
17 got Herrera talking about who they keep there. I
18 don't think that's necessary. But I'm probably not
19 going to sanitize it when Baca is talking about ADX,
20 or wherever it is. So it will be a mixed bag. I
21 didn't think it was quite fair. I'm not sure the
22 jury is quite as attuned to ADX. It's some super
23 max up there. I think he's in Colorado. But I did
24 include one statement or two that Mr. Herrera looked
25 like he was describing the kind of people that were

1 there. I don't think that should come out.

2 MR. LOWRY: There were, I think, multiple
3 references to El Chapo, and that kind of thing.

4 THE COURT: Yeah. I think I kept that one
5 out. You're going to get a chart on this, like you
6 got --

7 MS. BHALLA: Can I ask a question about
8 the transcript?

9 THE COURT: What?

10 MS. BHALLA: I did not look at those
11 redactions. And I apologize, I meant to. And I
12 didn't get to it. But there is a statement where
13 there was a recording and it's talking about Mr.
14 Herrera, they're talking about Mr. Herrera. And the
15 conversation is along the lines of would I cross
16 Enriquez, put a hit out on Carlos, (check

17 because he has paperwork on Mario Rodriguez
18 for murdering someone else. I don't know if the
19 Government has redacted that statement or not.

20 MR. BECK: I don't know. Probably not.

21 THE COURT: Why don't you do this: Once
22 you find it and show it to Mr. Beck, and if y'all
23 can agree, fine. If you can't, it may be something
24 I can take a look at it.

25 MS. BHALLA: I will. Thank you, Your

1 Honor. It didn't hurt me so I don't mind if it
2 stays in.

3 THE COURT: Oh, you're wanting to keep it
4 in?

5 MS. BHALLA: Yeah.

6 THE COURT: Okay. Well, just show it to
7 him and let me know.

8 MS. BHALLA: I will. Thank you, Your
9 Honor.

10 THE COURT: Anything else?

11 MR. CASTELLANO: We'll be next door.

12 THE COURT: Well, leave a telephone number
13 with Ms. Standridge, so that if we get some word we
14 can give you a call.

15 MR. CASTELLANO: We'll be next door
16 looking at the Court's order.

17 THE COURT: Okay (The following
18 proceedings were held in open court.)

19 THE COURT: I'm going to have Ms.
20 Standridge step back to the jury room, unless
21 anybody has an objection, just tell the jury we're
22 just going to wait a little bit.

23 (A discussion was held off the record.)

24 THE COURT: I just got -- Ms. May has just
25 forwarded to K'Aun, Ms. Wild, a text message. So

1 this is forwarded from Ms. May. It says, "Doctor
2 just examined me, and is ordering blood work and
3 x-ray." And what Ms. Wild says, "From may just
4 now." So that was -- well, I can't tell. I don't
5 have the time on it. But it just came through. So
6 that's where we are.

7 All right. We'll be in recess.

8 (The Court stood in recess.)

9 THE COURT: Let's go on the record. Looks
10 like we've got everybody here. Here's the latest.
11 I think Ms. Standridge showed you the last email I
12 got from Ms. Wild. It says, "This is from Ms. May
13 and it's being forwarded to Ms. Wild and forwarded
14 to me, so this is coming directly from Ms. May.
15 "Just put an IV in and started breathing treatment.
16 Already did X-rays."

17 So I guess, given that, I wondered what
18 are people thinking we ought to do.

19 Ms. Armijo?

20 MS. ARMIJO: Your Honor, I guess if we
21 don't know -- we waited this long, my concern is if
22 we start letting jurors go, one, they're going to
23 know that, oh, maybe I can be let go if I'm sick
24 enough. Not that they would lie about it,
25 certainly, but I think we have a number of jurors

1 that are coughing a great deal, so that's a concern,
2 is if we start to let people go. So I would say
3 that we -- breathing treatments, we know Mr. Perez
4 takes some, I took one this morning and last night,
5 and it helps tremendously. So I guess we would
6 certainly like to see what the next step is with
7 her.

8 THE COURT: Educate me a little bit. What
9 is a breathing treatment?

10 MS. ARMIJO: A breathing treatment is
11 simply taking a puffer, like Albuterol, to help to
12 open up your lungs. And so when they get breathing
13 treatments with a nebulizer, a little machine, so it
14 takes about 10 minutes. You put a little Albuterol
15 solution, or whatever they want to give her. There
16 is different types. But it's like taking a puffer
17 for immediate relief, and to help you breathe
18 better. And in my instance, it helps me stop
19 coughing, because a lot of my cough when I'm sick is
20 from respiratory restriction.

21 THE COURT: What do the defendants think?

22 MS. DUNCAN: Perhaps what we could do is
23 take a lunch break now, let the jury go, and then
24 check back in about 1 or 130, and see how she's
25 doing.

1 THE COURT: All right.

2 MS. DUNCAN: But I haven't conferred with
3 any of them. So I speak from Team Baca.

4 THE COURT: Is that all right go ahead and
5 send the jury off for their lunch break, everybody
6 take a lunch break, and we'll reconvene a little bit
7 later?

8 MS. JACKS: I'll just throw another option
9 on the table. I don't know how we can really expect
10 this juror to come back today. I mean, she was
11 looking poorly yesterday. I would think, after
12 spending the morning in the ER, she's not going to
13 be up for coming back today. So my option that I'll
14 throw on the table is to take the rest of the day
15 off and come back tomorrow morning.

16 THE COURT: Well, it creates some
17 logistical concerns to do that. I'd rather think
18 about, having on the table pulling the plug on her.
19 I don't know if taking a half a day off is any
20 better than taking a day off, or something like
21 that. I don't know what she's going to be in the
22 morning.

23 Mr. Cooper is back there, he's waiting to
24 watch witnesses that are here. It creates problems.

25 Let's take the lunch break. If everybody

1 is comfortable, I'll just have Ms. Standridge send
2 them to lunch break, tell them, take their time,
3 we're not going to start without them. And maybe
4 they can tell her when they're back in. And then we
5 can see where they are. And I'll keep you posted.

6 If I find anybody -- if I get any messages
7 from Ms. Wild, but let's go ahead and take our
8 lunch. And if you want to try some other new place,
9 go ahead and try it. And we'll get back together.
10 Everybody just comfortable with Ms. Standridge doing
11 it rather than me bringing them in here?

12 MR. VILLA: Yes, Your Honor. I just
13 wanted to add, I'm fine with the Court's proposal.
14 One reason I like what Ms. Jacks had to say, because
15 Ms. Fox-Young is at home with her sick baby. But
16 let's see where we are, and, you know, I think I'm
17 not sure about the Court's use of the term "pulling
18 the plug" on this juror, because she's not even on
19 life support yet. But I think you meant excusing.
20 We'll see you at 1:30.

21 All right. See you then.

22 (The Court stood in lunch recess.)

23 THE COURT: All right. Let's go on the
24 record. I think I have passed around -- or had
25 Ms. Wild send to you, so I think everybody knows

1 what these emails are going to say. But let me put
2 them on the record. I think after we broke, I got
3 another one from Ms. Wild that was forwarding an
4 email from Ms. May, that said, "They just did a CT
5 scan and results take 45 minutes." And she did one
6 of those unhappy faces.

7 And then we got a little bit later this,
8 it says, "OMG they misdiagnosed me when I came here
9 on Tuesday. Triple exclamation mark. I had all my
10 immunizations and everything. But I have the flu.
11 Double exclamation mark. I'm so sorry that I was in
12 the courtroom and jury room with so many people. I
13 feel horrible that I exposed the flu to everyone. I
14 jus feel so bad. Please apologize for me. I'm so
15 sorry to cause such inconvenience." It says from
16 May.

17 I had Ms. Wild send a note, and I don't
18 exactly know what I said but, it was scripted this
19 way: Are you coming back to the courtroom? And I
20 think Ms. Wild sent that and I have received no
21 response from Ms. Wild or from Ms. May.

22 So thoughts as to how to proceed, Mr.
23 Beck?

24 MR. BECK: I think it's hard to lose a
25 juror. But I think given that she has the flu, I

1 think we should cut her loose and move on to our
2 first alternate.

3 THE COURT: All right.

4 MR. BECK: I think we probably should not
5 convey her apology that she has the flu to the other
6 jurors. But that's how I think we should proceed.

7 MR. LOWRY: Mr. Lowry?

8 MR. LOWRY: Well, Your Honor, I don't
9 disagree with that. But Mr. Beck raised an issue
10 that concerns me a little bit. And that is, I mean,
11 we sort of have a window of opportunity to get flu
12 shots for the rest of the jury. And I don't want to
13 be a pessimist here, but she sat probably in the
14 jury box with an active flu, and we just don't know
15 how many people may have picked it up. And I don't
16 know how many people have their flu shots. But I'm
17 just concerned about what the imminent further will
18 hold. I don't know that -- I understand the
19 position we don't want to alarm the jury, I think we
20 might be in a position to ward off an epidemic.

21 THE COURT: Well, does the Government have
22 an objection to me saying it's been confirmed that
23 she has the flu, so if any of you get to feeling
24 bad, you might want to head over to the emergency
25 pronto, and get the medicine which tends to work, if

1 I understand it correctly, quicker if you go earlier
2 rather than being less effective the longer you
3 wait.

4 MS. ARMIJO: I guess we'll leave that in
5 the Court's discretion. My understanding is that
6 the flu shot won't help them at this point because
7 the flu shots takes at least two weeks to be
8 effective. So I don't think the shot would help
9 them, but if they feel the signs or symptoms of it,
10 taking Tamiflu would help them. And you're supposed
11 to go within the first 48 hours of symptoms to have
12 that be effective.

13 THE COURT: Is it 48 hours?

14 MS. ARMIJO: Yes.

15 THE COURT: All right. Well, does Mr.
16 Lowry speak for the defense group? Is that about as
17 good as we can do?

18 MR. VILLA: I think, Your Honor, letting
19 her go, I would agree with reluctantly.

20 In terms of public health, I don't know
21 what the answer is, but I certainly think if
22 somebody is feeling not well, they probably need to
23 get to the doctor and see if they can get Tamiflu.

24 THE COURT: All right. Let's go ahead and
25 bring the jury in, and if nobody has any strong

1 objection, I'm just going to indicate that she got
2 misdiagnosed and she does have the flu. She didn't
3 intend to be here if she had the flu, but she ended
4 up having it. So if people have symptoms, make sure
5 they get over there and get it treated as early as
6 possibling (all rise (.The jury entered the
7 courtroom.)

8 THE COURT: It seems like it was a long
9 time ago that I last saw you. Sorry you've been
10 back there. I hope you had a good Valentine's Day.
11 I think my wife was pleased but she said that will
12 kiss was going to be a raincheck so I think we had a
13 good evening, but I'm going to have to wait on that
14 kiss.

15 You probably noticed Ms. May, she's been
16 having some trouble she was in the emergency room
17 all night; went to -- was throwing up, and so she
18 went to the emergency room. Unfortunately, they
19 misdiagnosed her earlier when we were getting the
20 medicine from Walgreen's, and she does have the flu.
21 So I'm going to go ahead and tell you that. It's
22 not fun for me to tell you that, particularly you in
23 the back and maybe you people right in front. You
24 know she was struggling, she had her stuff on there.
25 And she feels very terrible and said to apologize to

1 everybody. So I'm conveying what she said. But I
2 don't think we ought to run the risk of having her
3 in here, now that we've got a confirmed case of the
4 flu. So we've cut her loose, and she's not going to
5 participate in the trial.

6 I say all that because if you get to
7 feeling bad I'm in the a doctor and I don't even
8 stay at the holiday in express here over at even can
9 to, so, but what I do under is if you get that
10 Tamiflu you go early you got a fighting chance of
11 that working and being effective and if you hadn't
12 had your shots I don't know what to tell you 0 than
13 but you might give that some thought as well. But I
14 make full disclosure to try to keep you healthy
15 because we want you to be healthy for just
16 humanitarian purposes, but we also want you to be
17 healthy so we can get this thing done and get it
18 done in a timely manner. So keep those in mind, and
19 see if you get to feeling bad try to get over there
20 as soon as possible.

21 Thanks for being back. I appreciate your
22 hard work. And we just kind of had to make some
23 tough calls as we went through the day to figure
24 exactly what to do. We didn't want to lose Ms. May
25 if we didn't have to, but I think, as things turned

1 out today, we made the only call we really could
2 make.
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1 THE COURT: All right. Is Mr. Munoz
2 prepared to retake the stand?

3 MS. ARMIJO: I think so, Your Honor.

4 THE COURT: Let's see if we can get him in
5 here.

6 All right. Mr. Munoz, if you'll come up
7 and go ahead and be seated, I'll remind you that
8 you're still under oath.

9 THE WITNESS: Yes, sir.

10 THE COURT: All right.

11 Ms. Armijo, if you wish to continue your
12 direct examination of Mr. Munoz, you may do so at
13 this time.

14 MS. ARMIJO: Thank you.

15 THE COURT: Ms. Armijo.

16 FREDERICO MUNOZ,
17 after having been previously duly sworn under
18 oath, was questioned, and continued testifying
19 as follows:

20 CONTINUED DIRECT EXAMINATION

21 BY MS. ARMIJO:

22 Q. Mr. Munoz, I believe we were discussing
23 maybe your criminal history yesterday, and when you
24 were -- joined the SNM. Now -- and I believe we
25 were still when you were a teenager. So I want to

1 go back to, let's see, 1997. You were talking about
2 you were on a violation crew. Do you recall that?

3 A. Yes, ma'am.

4 Q. Now, when you were doing that, how long
5 did you stay, as far as that prison time, while you
6 were on that violation crew?

7 A. All the way up until the Department of
8 Corrections locked up many of the members of our
9 gang and sent them to the North unit after a
10 stabbing which resulted between the Aryans and our
11 guys. So no more than two months.

12 Q. At that point, do you parole out in 1998?
13 Does that sound about right?

14 A. Yes, ma'am.

15 Q. And when you get out, how long do you last
16 on the streets?

17 A. Nine days.

18 Q. Did you subsequently get another -- pick
19 up another charge for armed robbery?

20 A. Yes, ma'am.

21 Q. Actually, I believe it's already in
22 evidence, Exhibit 737, and if we could go to -- how
23 long were you sentenced to the Department of
24 Corrections for that?

25 A. Nine years.

1 Q. And was any of that suspended?

2 A. I don't believe so, ma'am. It's possible,
3 but I think I served at least half of it.

4 Q. Now, when you picked up that armed
5 robbery, where were you being held pending that
6 charge?

7 A. At the Bernalillo County Detention Center
8 in Albuquerque, New Mexico.

9 Q. And were there other SNM Gang members
10 there?

11 A. Yes, ma'am.

12 Q. Now, prior to going to -- is it called
13 BCDC?

14 A. It was. The new jail is Metropolitan
15 Detention Center. But the old one downtown is
16 Bernalillo County Detention Center, BCDC.

17 Q. BCDC. Prior to going to BCDC, did you
18 have an opportunity to meet Angel Munoz?

19 A. Yes, ma'am.

20 Q. And who is Angel Munoz?

21 A. He was the most senior member of the SNM.

22 Q. And how did it come about that you were
23 able to meet him?

24 A. There was a federal judge that was
25 overseeing the inmate population at the Bernalillo

1 County Detention Center. If the jail population
2 exceeded a certain number, the City would receive a
3 fine. So the remedy or the solution to the jail was
4 to send handfuls of us prisoners from each of the
5 floors to various jails over the weekend, so as to
6 remain under the cap. So a few times during that
7 circumstance, I was chosen to go spend the weekend
8 at a county jail, say, in McKinley County, Milan,
9 which was the 4C, Cibola County Correctional Center.
10 And at that time, when I went on one of those
11 weekends, I met with Angel Munoz, who was finishing
12 up his sentence in the State at Milan.

13 Q. And when you did so, did he give you any
14 instructions as far as -- did he know that you were
15 going to -- you were being housed at BCDC pending
16 the resolution of your armed robbery?

17 A. Yes. We spoke when I would go outside to
18 the rec yard. I would approach his window, which
19 was situated such that I could talk to him while I
20 was having my recreation, so we would talk the whole
21 time I was there.

22 Q. And did he give you any instructions as
23 far as something for you to do when you went back to
24 BCDC?

25 A. Yes, ma'am.

1 Q. And what instructions were those?

2 A. He asked me first who was all there, to
3 give him a list of, by name, everybody who was
4 there. I did that.

5 One of the guys that I mentioned was being
6 targeted by Angel and the family because he had a
7 dual membership in the SNM and also in the Nuestra
8 Familia prison gang, which was systematically
9 removed by our brothers over the years. And he
10 joined our gang, which is a sin, a crime, so when
11 Angel found out that the guy was over there, he told
12 me to kill him.

13 Q. What guy was that?

14 A. His name was Felix Martinez.

15 Q. And when you say he told you to kill him,
16 is there a term for that?

17 A. He said to take him out.

18 Q. Now, prior to around this time, or before
19 this time, you've mentioned Angel Munoz. Had you
20 met Gerald Archuleta yet?

21 A. Yes, I had.

22 Q. And who is Gerald Archuleta?

23 A. He was at that time also a senior member
24 of the SNM, somebody who I considered to be the
25 senior most, behind Angel Munoz and Mr. Baca and

1 Marty Barros.

2 Q. And where did you meet him?

3 A. I met him for the very first time at the
4 Main unit, in 1997, after the stabbing -- when three
5 of our brothers got stabbed by the Aryans. The
6 Department of Corrections locked up a lot of our
7 brothers and sent them to the Level 6, which at that
8 time was just maximum security. And at that point
9 they allowed Gerald Archuleta to come to the general
10 population for orientation, and that's the first
11 time we met.

12 Q. Now, going back to 1998, you had
13 instructions regarding Felix Martinez. Did he have
14 a nickname within the gang?

15 A. Animal.

16 Q. And did you follow through with your
17 orders?

18 A. Yes, I did.

19 Q. Did you have assistance?

20 A. Yes, I did.

21 Q. Who did you have assistance from?

22 A. Two more of our brothers named Leonard
23 Lujan and Manuel Benito, Panther.

24 Q. And what did you all do?

25 A. I organized a hit, an operation. And the

1 three of us went into Felix's room around 3:00 in
2 the afternoon, after a count, and I strangled him.

3 Q. Did you strangle him with anything?

4 A. With a sheet.

5 Q. Were you given directions as to how to
6 kill him or not?

7 A. Oh, it was a recommendation, but it made
8 sense to me, so I followed it.

9 Q. And whose recommendation was it?

10 A. It was Angel's.

11 Q. What did he say as far as the
12 strangulation?

13 A. He said, "Just strangle him. It's
14 quieter. It's not messy."

15 Q. And what did Leonard Lujan and Manuel
16 Benito do?

17 A. Leonard mostly helped me by restraining
18 Felix so that he couldn't get out of the situation.
19 And Manuel Benito was assigned -- I assigned him to
20 watch the door so that nobody could come in and
21 observe what we were doing.

22 Q. Now -- and were you successful?

23 A. Yes, I was.

24 Q. Now, and I guess I should ask, Leonard
25 Lujan and Manuel Benito -- are they SNM members?

1 A. Yes, they are.

2 Q. And were they being held at the Bernalillo
3 County Detention Center, as well?

4 A. Yes, we all lived on the same floor
5 together.

6 Q. Do you know if his body was discovered
7 right away or not?

8 A. I believe it was discovered about -- we
9 killed him around 3:00 in the afternoon. They did
10 not discover him until around 10:00, 10:15, during
11 an emergency count procedure.

12 Q. Okay. 10:15 at night?

13 A. Yes, ma'am.

14 Q. All right. Now, were you -- did they find
15 out -- "they" being law enforcement -- find out that
16 you were involved with that right away, or did that
17 come sometime later?

18 A. It came approximately seven years later.

19 Q. So you remained at the Bernalillo County
20 Detention Center and eventually do you get convicted
21 of the armed robbery?

22 A. Yes, I do.

23 Q. And when you get convicted of armed
24 robbery, where are you sent?

25 A. I was sent back to RDC, which was the

1 reception facility for the state prison in Grants.
2 And from there I was sent to the PNM South unit, in
3 Santa Fe, New Mexico.

4 Q. Would that have been maybe level -- what
5 was it then, 5?

6 A. There was no such thing as a level program
7 in 1998, so it was just a medium security prison.

8 Q. Now, did you meet more -- was that where
9 SNM Gang members were being held, if you recall?

10 A. Yes, ma'am.

11 Q. Did you have an opportunity to meet even
12 more SNM Gang members upon that imprisonment?

13 A. Yes, ma'am.

14 Q. Do you know Daniel Sanchez?

15 A. Yes, ma'am, I do.

16 Q. And do you see him in the courtroom today?

17 A. Yes, I do.

18 Q. Where is he?

19 A. He's the gentleman with the glasses, to
20 the far left of the table.

21 Q. And what is he wearing?

22 A. He's wearing a dark blue -- looks like a
23 shirt with a red tie, and glasses.

24 MS. ARMIJO: May the record reflect
25 identification of Daniel Sanchez?

1 THE COURT: The record will so reflect.

2 BY MS. ARMIJO:

3 Q. And how do you know Daniel Sanchez?

4 A. From both of our mutual membership in the
5 gang.

6 Q. When did you meet him?

7 A. I believe we first met in 1996, at the
8 Southern New Mexico Correctional Facility, here at
9 the state pen.

10 Q. And did you have an opportunity to be with
11 him again after that?

12 A. At the North unit in 1998, we were in the
13 same pod on the same tier.

14 Q. Now, did you -- and did you continue your
15 quest as a soldier, so to speak, once you got back
16 to PNM?

17 A. Yes, ma'am.

18 Q. And was there anyone in particular that
19 you were under?

20 A. Gerald Archuleta.

21 Q. What was Gerald's role back then in 1998?

22 A. I mean, he had command authority. When no
23 one else was around senior to him or with equal
24 status, he was making decisions for all of us
25 everywhere I've ever been.

1 Q. So did you take orders from him?

2 A. Yes.

3 Q. And did that continue throughout the time
4 that you've been -- were in SNM?

5 A. Yes, ma'am.

6 Q. Now, do you get released a few years
7 later?

8 A. Yes, ma'am. In 2001 I was paroled from
9 the North unit in Santa Fe.

10 Q. And you actually go out onto the streets?

11 A. Yes.

12 Q. And were you on parole?

13 A. Yes.

14 Q. Did you still -- even though you were out
15 on parole and on the streets, were you still an SNM
16 Gang member?

17 A. Yes, I was.

18 Q. Did an incident happen in 2003 that ended
19 up landing you back into prison?

20 A. Yes, it did.

21 Q. And what happened?

22 A. I was at a barber shop in the North
23 Valley, in Albuquerque, New Mexico, with another
24 member of our gang, and he advised me that a guy who
25 walked into the barber shop was a member of our

1 rival gang.

2 Q. And which rival gang was that?

3 A. That would be the Los Carnales.

4 Q. And did you, in fact, know the person or
5 not?

6 A. I did not know him. I don't believe he
7 knew me, either. We looked at each other. Didn't
8 recognize him.

9 Q. What significance does it have to see
10 somebody on the street that is possibly a Los
11 Carnales?

12 A. For my purposes -- and no one had ever
13 stopped me of this notion -- we were in a full-blown
14 war, and it was an ongoing war. It didn't matter
15 the location, the venue. If you see a rival, you
16 have to act on it.

17 Q. Okay. So what happened? What did you do?

18 A. I confronted him. I asked him who he was.
19 He approached me and he stated his gang, he
20 announced his identity, his membership in his gang.
21 And so I killed him.

22 Q. How did you kill him?

23 A. I shot him.

24 Q. And what gang -- did he, in fact, announce
25 to you that he was Los Carnales?

1 A. Yes, ma'am. Those were his last words.

2 Q. And you shot him there at the barber shop?

3 A. Yes, ma'am.

4 Q. And so do you eventually get convicted of
5 that, as well?

6 A. Yes. I received a life sentence for that.

7 Q. Now, prior -- and have you been
8 incarcerated ever since then?

9 A. Yes, I have.

10 Q. Prior to going back in for that incident,
11 were you involved in a shooting regarding Julian
12 Romero?

13 A. Yes, ma'am. I shot him.

14 Q. Okay. Who is Julian Romero?

15 A. He -- Julian was also a very senior member
16 of the SNM who, as far as I understand, was there at
17 the very beginning, the genesis of the SNM Gang.
18 But he spent a lot of his time out of the state, so
19 I didn't know him that well until the last few years
20 of 1997, '98, when I first met him.

21 Q. And then you had an opportunity to meet
22 him?

23 A. When he came back from -- I believe he was
24 in Oregon, they returned him to the North unit where
25 most of us were at. And it was Gerald who

1 introduced me to him.

2 Q. "Gerald" being Gerald Archuleta?

3 A. Yes, ma'am.

4 Q. And when Gerald introduced him to you, did
5 he and Julian -- were they getting along at that
6 time?

7 A. Oh, yeah. They had a great deal of
8 affection for each other, to my observation.

9 Q. At some point in time did that come to an
10 end?

11 A. Yes, it did.

12 Q. And how so?

13 A. Because Julian began to have a romantic
14 relationship with Gerald's wife.

15 Q. Based upon -- is that allowed in the SNM?

16 A. It is not.

17 Q. And why not?

18 A. Because it creates dysfunction. It
19 creates suspicion, distrust between the brothers.
20 And Angel Munoz did not want that, and he stated
21 explicitly that that should not happen between
22 brothers.

23 Q. As a result of that, what did Gerald
24 Archuleta do?

25 A. He began to campaign to everybody that

1 Julian has to get dealt with, meaning get killed,
2 removed, taken out.

3 Q. As a result of that, did he give you any
4 explicit orders when you were on the street?

5 A. Yes. He told me if I found him -- to look
6 for him, and if I find him, to shoot him.

7 Q. And based upon who Gerald was to you, were
8 you going to -- were you planning on following those
9 orders?

10 A. Oh, yes, ma'am. I considered it a lawful
11 order, and I accepted it, and I began to look for
12 Julian.

13 Q. Did you eventually find him?

14 A. Yes, I did.

15 Q. Do you recall when this was,
16 approximately?

17 A. I would say about 30 -- exactly a month
18 before the barber shop murder, so I would say
19 towards the end of March of 2003.

20 Q. And what happened?

21 A. I, along with another member of the SNM,
22 went driving in a rental car at the address I was
23 provided that Julian would be at. I made a few
24 circuits around the block. I finally saw him
25 approaching his house. And I pulled up. I was in

1 the passenger seat. And I had a 9 millimeter
2 handgun. I called him, "Julian." He was leaning in
3 the right front driver's side door of the vehicle
4 talking to somebody.

5 Q. And did he respond?

6 A. Yes, he looked up, and he said, "Who is
7 that?" And he didn't identify me right away. He
8 began to approach the vehicle. And I was waiting
9 for him to walk up to the window, and I was going to
10 shoot him in the head. But my brother, who was with
11 us at the time --

12 Q. Who was that?

13 A. That would be Shiman Pacheco. He sort of
14 jumped the gun, got a little antsy, and began to
15 yell, "Shoot him, shoot him." So I started shooting
16 before I was ready.

17 Q. And so did you actually end up hitting
18 Julian Romero?

19 A. Yes, ma'am.

20 Q. Where did you hit him?

21 A. I believe in the torso and the leg.

22 Q. Did he survive?

23 A. Yes, he did.

24 Q. And was that crime ever investigated, that
25 you know of?

1 A. Not to my knowledge, because I reported to
2 the PO officer the very next day, and there was
3 nothing came about it.

4 Q. And then you said that was approximately
5 about a month before the barber shop murder?

6 A. Yes, ma'am.

7 Q. So I'm going to show you again Exhibit
8 737, and if we could go to the ninth -- I believe
9 eighth page of that.

10 A. I don't see anything on this monitor.

11 Q. No, it will come up.

12 Actually, go to the page before.

13 All right. Do you see the document now?
14 Is it showing on your monitor?

15 A. Yes, ma'am.

16 Q. All right. And does that appear to be
17 part of the conviction that you received back in
18 2004?

19 A. Yes, ma'am, for the barber shop murder.

20 Q. And if we could go to the next page,
21 please. And you indicated that you received a life
22 sentence?

23 A. Yes, ma'am.

24 Q. Okay. And is that indicated there on what
25 is Bates stamped 8569?

1 A. Yes.

2 Q. Now -- and so then after receiving this
3 conviction, you then returned back into the prison
4 system; correct?

5 A. Yes. I was returned back to the state
6 penitentiary in Santa Fe, New Mexico.

7 Q. And I'm going to go ahead and go to the
8 same document, Bates 8573. Now, you indicated
9 earlier that the murder that you committed in 1998
10 on Animal -- that you were not initially prosecuted
11 on that case; is that correct?

12 A. It was a cold case. It was classified as
13 a cold case by the Albuquerque Police Department.

14 Q. And then did the investigation pick up and
15 eventually you were investigated for that murder
16 sometime around 2007?

17 A. Yes, ma'am.

18 Q. And as a result of that, did you end up
19 taking a guilty plea?

20 A. Yes, ma'am.

21 Q. And I'm going to go, then, to the very
22 next page. And does this reflect there first-degree
23 murder where you received a life sentence?

24 A. Yes, it does.

25 Q. All right, now. Thank you. Now, when you

1 went back after the barber shop murder to
2 Corrections, what were things like, as far as you
3 and the SNM?

4 A. I think emotionally I was no longer
5 invested in the gang. I lost my passion for it. I
6 spent some time in a relationship with a female, and
7 I began to enjoy that lifestyle. I started to
8 compare that sort of normalcy with the previous
9 eight years of my life, and I didn't want that
10 anymore. I just didn't know how to exit from it. I
11 didn't have an exit strategy, so I lingered and I
12 stayed representing my gang.

13 And when I got back to PNM, the state pen,
14 I began to lose my love and my respect for Gerald,
15 who was my boss at the time, based on some things
16 that were occurring.

17 Q. And I'm going to ask you about those
18 things. Did something occur when you went back up
19 with Gerald Archuleta that made you not look up to
20 him as you once had?

21 A. Yes.

22 Q. What happened?

23 A. I think the biggest thing for me was that
24 Gerald was negotiating a peace treaty with the LC,
25 the Los Carnales gang, while he was simultaneously

1 calling my cellphone while I was out there in
2 society, telling me to find these guys and keep the
3 war up and shoot them and represent him.

4 So I felt like as if he was using me
5 essentially in that the work, so to speak, killing
6 for the gang -- he made my work meaningless, and I
7 didn't like that.

8 Q. All right. And so you resented the fact
9 that you killed on sight a Los Carnales, only to
10 find out that there was possibly a peace treaty
11 going on?

12 A. Oh, yes, ma'am. I mean, I just come back
13 to the state prison with a life sentence for killing
14 guys who are representing the very same gang that
15 I'm observing Gerald and other brothers of mine
16 interacting with civilly. I didn't like that.

17 Q. Now, do you know Carlos Herrera?

18 A. Yes, I do.

19 Q. And I don't know -- if we did discuss this
20 yesterday, I'm sorry -- do you see him in the
21 courtroom today?

22 A. Yes, ma'am. He is, to my line of sight,
23 directly behind you.

24 MS. BHALLA: Your Honor, we stipulate.

25 THE COURT: Does that work for you, Ms.

1 Armijo?

2 MS. ARMIJO: Yes, Your Honor.

3 THE COURT: All right. Ms. Armijo.

4 BY MS. ARMIJO:

5 Q. And is he an SNM Gang member?

6 A. Yes, he is.

7 Q. And when did you first meet him?

8 A. I first met Carlos in RDC in Western New
9 Mexico, when I very first began my criminal career;
10 and then again at the state penitentiary down the
11 road here in Las Cruces in 1996.

12 Q. Now, you indicated that after pleading
13 guilty to life and going back in, that you started
14 to look at things differently as far as your life in
15 the SNM. Now, at some point did you actually decide
16 to leave the gang?

17 A. Yes, I did.

18 Q. And when was that?

19 A. It was really right around that time when
20 I got back and I saw things with Gerald that I
21 didn't like. But again, I pretty much was a coward.
22 I didn't have the courage or the bravery to announce
23 that I didn't want to have anything to do with it no
24 more, so I stayed a member.

25 It was in 2007 -- I believe it was 2007 --

1 it may have been the beginning of 2008 -- when MSNBC
2 came through the facility doing a documentary. They
3 come to various prisons and ask guys if they would
4 tell their story. And I agreed to do that.

5 Q. And when you did that, did you not speak
6 kindly of the SNM?

7 A. I just stated what I felt about it, and
8 that I no longer wanted to have anything to do with
9 it, that I was out of it, yes.

10 Q. Then at that point, were you moved away
11 from the SNM?

12 A. No, ma'am. The Department of Corrections
13 just changed my classification from involuntary
14 segregation to now I was in danger because of my
15 commentary on the show. But they remained -- they
16 would not send me out of state, so I was still
17 living at the state pen with all of the guys that I
18 was criticizing in the program.

19 Q. Now, at some point did you decide to
20 cooperate with the federal government?

21 A. When I made that decision to exit the gang
22 publicly, I accepted who I was after that, and I
23 made myself available to any law enforcement agency,
24 whether it was the federal agency, the state prison
25 investigators. If anybody needed to talk to me, I

1 was willing to talk to them, yes.

2 Q. And did you talk to various people?

3 A. Sure. Representatives of STIU questioned
4 me about things, some folks from the federal
5 government, in 2008.

6 Q. And were you eventually arrested in a case
7 separate from this one that you're here testifying
8 on, but a different one with other individuals in
9 April of 2016 on a RICO conspiracy?

10 A. You mean the very beginning of this
11 overall case? Is that what you're --

12 Q. Yes, I mean, were you aware that there
13 have been various roundups and various indictments
14 into the SNM?

15 A. I was at the drop-out yard in Clayton, New
16 Mexico, when -- I believe when this began. Now, the
17 day before the very first takedown, I was approached
18 by representatives of the federal government about
19 it, yes.

20 Q. Okay. And then at that point was that in
21 December of 2015, if you recall? And you may not
22 recall.

23 A. I just know that the day of the takedown,
24 it was broadcast all over the local media in
25 Albuquerque. All I know is that about two days

1 before that, I had my very first conversation with
2 Mark Myers, who was deputy secretary of the state
3 prison system, and an STIU officer who stated that
4 the federal government was in the process of taking
5 down the SNM Gang.

6 Q. And at that point, you were already
7 removed in a different facility?

8 A. Yes, I was returned back to the Level 6
9 without ever any accusation of any kind of
10 misconduct where I was at. But I presume it had to
11 do with this case, because the day of my placement
12 from the facility I was at to the North was, I
13 think, the day this federal investigation began.

14 Q. And at some point in April of 2016, were
15 you indicted?

16 A. Yes, ma'am, I was.

17 Q. And did you plead guilty?

18 A. Yes, I did.

19 Q. Now, did you actually plead guilty to
20 slightly different charges than you were indicted
21 for; do you recall? I should say -- and I'll
22 explain it --

23 MS. ARMIJO: I'm going to move for the
24 admission of Exhibits 696 through 698.

25 THE COURT: Any objection from the

1 Defendants?

2 MS. ARMIJO: Your Honor, may we approach?

3 THE COURT: You may.

4 (The following proceedings were held at
5 the bench.)

6 THE COURT: What do you have there?

7 MS. DUNCAN: Your Honor, I don't object to
8 the plea agreement; or if there is an addendum, I
9 don't object to that. I object to this information
10 because it has the language, common language, in the
11 indictment that we asked the Court to strike about
12 the history and background of the SNM.

13 THE COURT: What's the other document?

14 MS. DUNCAN: It has the factual basis. It
15 doesn't implicate us. I don't mind.

16 THE COURT: Have you redacted this the
17 same way as the others? So there is no problem?

18 MS. DUNCAN: No.

19 THE COURT: 697. Anybody else have any
20 problem with it? So Government's Exhibit 697 will
21 be admitted.

22 MS. ARMIJO: The issue with the
23 information -- he didn't plead straight up to the
24 charge. He pled to more. He pled to an information
25 because -- for his sentencing exposure to be greater

1 than he was actually indicted. That's the point I'm
2 bringing out with the information.

3 THE COURT: Why don't you do this? If you
4 want to make the point -- and I'll certainly let you
5 make the point -- why don't you put this in front of
6 him, say, "You didn't pled to the indictment, right?
7 You pled to an information. You pled for more than
8 what's in the indictment?"

9 Then let's just not put this in.

10 MS. ARMIJO: Okay.

11 MR. VILLA: Your Honor, I guess I forgot
12 about it, too, but could you say something to the
13 jury about Ms. Fox-Young? She's with a sick baby.

14 THE COURT: I'll do it.

15 (The following proceedings were held in
16 open court.)

17 THE COURT: Mr. Villa reminds me we got so
18 excited about Valentine's Day and Ms. May, I didn't
19 do what I promised I would do about Ms. Fox-Young.
20 She's got a little four-month-old baby that's with
21 her down here in Las Cruces. So she's been working
22 during the day and been going back to the apartment
23 in the evening. The baby was sick today, and so
24 with all the things going on, I just excused her.
25 And so we'll probably see her later, but that's

1 where she is, if you wanted to know. The baby
2 wasn't feeling well.

3 All right. Ms. Armijo.

4 Q. And Your Honor, I believe there was no
5 objection to 697.

6 THE COURT: I admitted 696, I think.

7 MS. ARMIJO: No, 697.

8 THE COURT: I'm not sure I made a ruling
9 on the third document. I said what we were going to
10 do on the information.

11 MS. ARMIJO: The plea agreement?

12 THE COURT: The plea agreement is 697?

13 MS. ARMIJO: Yes.

14 THE COURT: So it's admitted into
15 evidence.

16 (Government Exhibit 697 admitted.)

17 MS. ARMIJO: And I believe there is also
18 an addendum, which is 698.

19 THE COURT: Anybody have any problem with
20 the addendum?

21 MS. DUNCAN: No, Your Honor.

22 THE COURT: So not hearing any objection,
23 Government's Exhibit 698 will also be admitted into
24 evidence.

25 (Government Exhibit 698 admitted.)

1 BY MS. ARMIJO:

2 Q. And I'm going to show you, Mr. Munoz,
3 Exhibit Number 696.

4 MS. ARMIJO: May I approach, Your Honor?

5 THE COURT: You may.

6 BY MS. ARMIJO:

7 Q. Are you familiar with that document?

8 A. Yes, I am.

9 Q. All right. And did you, in fact, plead
10 guilty -- instead of pleading guilty to your
11 indictment that you were indicted on, did you plead
12 guilty to an information and expose yourself to a
13 greater sentence than you had been indicted on?

14 A. Yes.

15 Q. All right. I'm going now to Exhibit
16 Number 697, the first page. Does this appear to be
17 your plea agreement?

18 A. Yes, ma'am.

19 Q. And then the next page. You indicated
20 that you had pled guilty to a racketeering
21 conspiracy. Does that sound correct?

22 A. Yes.

23 Q. And then you pled guilty to a greater
24 charge that could receive a punishment of up to
25 life; is that correct?

1 A. Yes.

2 Q. And is that actually reflected on this
3 page?

4 A. Yes, ma'am, it is.

5 Q. All right. And I'm also going to show you
6 Exhibits Number 619 through 627.

7 MS. ARMIJO: With no objection, Your
8 Honor?

9 THE COURT: No objections to 619 through
10 627?

11 Not hearing any objections, Government's
12 Exhibits 619 through 627 will be admitted into
13 evidence.

14 (Government Exhibits 619 through 627
15 admitted.)

16 BY MS. ARMIJO:

17 Q. And can we please show 619? All right.
18 What is it that we're looking at here?

19 A. That is me.

20 Q. Okay. And that is on your arrest date of
21 April 28 of 2016?

22 A. Yes.

23 Q. Do you have any tattoos, I should ask?

24 A. Yes, I do.

25 Q. Do you have any SNM tattoos?

1 A. Yes, ma'am, I have three of them.

2 Q. We're going to go to 620. Is this a
3 photograph of you?

4 A. Yes, ma'am.

5 Q. Can you see any of the SNM Gang tattoos on
6 you?

7 A. Yes, the center of my chest.

8 Q. Okay. I'm going to Exhibit 621. And is
9 that a picture of the Zia symbol with the S?

10 A. Yes, ma'am.

11 Q. Do you also have an NM in it?

12 A. Yes, ma'am, it does.

13 Q. And then we're going to go to Exhibit
14 Number 622. What is it that we're looking at here?

15 A. That's just -- the "thug" is the thug life
16 tattoo that I have on my forearms. You see one
17 portion of that here. Then the Zia symbol on my
18 wrist has the initials SVP for Street Gang, South
19 Valley Pajaritos.

20 Q. Let's go to 623, please. Is that the
21 other tattoo you're talking about?

22 A. Yes, with the street gang on it.

23 Q. Okay. And then if we could go to 624,
24 what is that?

25 A. That's the other part of the thug life

1 tattoo. And then directly below that, in cursive,
2 are the letters "SNM," and below that is an
3 ugly-looking bar code with my state prison number.

4 Q. Okay. And so I'm circling what's between
5 "life" and, as you state, the "ugly-looking bar
6 code." Is that SNM?

7 A. Yes, ma'am.

8 Q. And can we go, please, now to Exhibit 625?
9 I'm sorry, we're on 626. And what is it that we're
10 looking at here?

11 A. A tattoo with the word "Sindicato."

12 Q. And what does that stand for?

13 A. That's the syndicate.

14 Q. And lastly, 627. And what is that?

15 A. That's just a Playboy bunny.

16 Q. What is your nickname?

17 A. Playboy.

18 Q. Who gave you that name?

19 A. My sister's friends.

20 Q. All right. Thank you.

21 Since cooperating with the Government,
22 have you received money for being -- or while you
23 were signed up with the Government, did you receive
24 money as part of your assistance?

25 A. Yes.

1 Q. Do you recall approximately how much that
2 was?

3 A. I don't recollect, ma'am. I would say on
4 a quarterly basis about \$250.

5 Q. Okay. And do they put it on your books on
6 a quarterly basis?

7 A. Yes.

8 Q. And I say "books," on --

9 A. Inmate account system.

10 Q. Okay. Now, have you -- did you have a
11 tablet in this case?

12 A. Yes.

13 Q. And what was the tablet for?

14 A. For the discovery for this case.

15 Q. And were you being housed with other
16 cooperators at Sandoval County?

17 A. Yes, ma'am.

18 Q. At some point in time did you tamper with
19 that tablet?

20 A. Yes, I did.

21 Q. And by "tamper," what do you mean?

22 A. I reset the tablet to the original Windows
23 10 format.

24 Q. And what would that allow you to do?

25 A. Access the entire function of the Windows

1 10 operating system.

2 Q. And by doing so, were you able to be on
3 the internet?

4 A. Yes, ma'am.

5 Q. Did you also lose the ability at that
6 point to review the discovery?

7 A. Yes. When you reset it, the discovery
8 gets erased, the entire C drive.

9 Q. Were you allowed to do that?

10 A. I never saw any rule proscribing against
11 it. I'm pretty sure it was implicit that we don't
12 do that sort of thing. But when it was discovered
13 that there was Wi-Fi across the street, the
14 temptation was too great not to.

15 Q. So when you did it, you knew that was
16 probably something you weren't supposed to do?

17 A. Right.

18 Q. And what sort of things did you look at on
19 the internet?

20 A. Pornography. I downloaded a lot of video
21 games, music video, and songs, like, MP3 files for
22 music.

23 Q. Now, I may not have mentioned this. I'll
24 ask you now. During your time with the Corrections,
25 I know you mentioned that the SNM was involved in a

1 lot of different crimes. Were they involved in
2 drug-trafficking?

3 A. Yes.

4 Q. And did you yourself partake in any drug
5 activities while you have been with the Department
6 of Corrections?

7 A. While I was an active member, throughout
8 the span of my career in the SNM, I flirted with
9 heroin, weed. Since I've left the gang and I've
10 been free to make my own choices and decisions apart
11 from everybody, I haven't messed around with any
12 kind of drugs.

13 Q. And when you say "messed around," that
14 means you haven't taken --

15 A. I haven't used them, yes, ma'am.

16 Q. And the murders that you committed, that
17 you have received life sentences for -- were those
18 committed for the SNM?

19 A. That was the only reason I did either one
20 of those things, ma'am.

21 MS. ARMIJO: If I may just have a moment,
22 Your Honor?

23 THE COURT: You may.

24 MS. ARMIJO: Pass the witness.

25 THE COURT: Thank you, Ms. Armijo.

1 Ms. Duncan, do you want to take the lead
2 here? Ms. Duncan.

3 MS. DUNCAN: Yes, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. DUNCAN:

6 Q. Good afternoon, Mr. Munoz.

7 A. Good afternoon.

8 Q. I think you testified that you met Mr.
9 Baca in early 1997; correct?

10 A. Yes.

11 Q. And a few months after you met him, he was
12 transferred out of the housing unit where you were
13 living; correct?

14 A. Well, at the facility.

15 Q. Transferred out of the facility.

16 A. Yes.

17 Q. And then at the end of 1997, he was
18 actually transferred out of state; correct?

19 A. Yes.

20 Q. And Mr. Baca was out of state until
21 approximately 2008; correct?

22 A. I believe he returned, but I never saw him
23 or interacted with him. I can't tell you exactly
24 when.

25 Q. Fair enough. So you saw him in 1997, and

1 then you never saw him again; is that correct?

2 A. Yes.

3 Q. And Ms. Armijo asked you about the plea
4 agreement that you entered in this -- or not in this
5 case, but in a related case; correct?

6 A. Yes.

7 Q. And you indicated that you had pled to a
8 charge greater than you had originally been charged
9 with; right?

10 A. Right.

11 Q. And the purpose of charging you in that
12 federal case was to get you into federal custody;
13 correct?

14 A. Yes.

15 Q. And the plan was, having brought you into
16 federal custody, that they could release you as soon
17 as your state sentence was over; correct?

18 A. You might have to clarify that for me.

19 Q. Sure. The idea was they would charge you
20 federally, so you'd be serving a federal sentence;
21 right?

22 A. Yes.

23 Q. And then they could transfer you into the
24 Federal Bureau of Prisons?

25 A. Immediately.

1 Q. You're currently serving a state sentence;
2 correct?

3 A. I'm serving two state life sentences.

4 Q. So when those sentences were over, once
5 you're in federal custody, you could be released
6 sooner than had you stayed in state custody;
7 correct?

8 A. No, ma'am. I must serve, by law, the
9 entire 30-year life sentence. You don't earn good
10 time. It makes no difference where I'm at, what
11 facility, whether it's in New Mexico or not.

12 Q. But you're aware that New Mexico can waive
13 its jurisdiction over your sentence; correct?

14 A. I'm not aware of that. By which you mean,
15 I will be transferred to serve my sentence
16 elsewhere, but the time still runs.

17 Q. Let me --

18 A. In other words, the federal government
19 doesn't take me into custody and, wink, wink, let me
20 out to the streets while the State thinks I'm
21 serving a life sentence elsewhere.

22 Q. Do you recall a conversation with your
23 mother where you talked about the plan that you had
24 to be charged federally and taken into federal
25 custody?

1 A. I might have discussed that sort of thing
2 with her, sure.

3 Q. And the plan was, you'd explain to Judge
4 Browning that you'd only been charged to go into
5 federal custody; correct?

6 A. Yes, ma'am.

7 Q. And that, under the plan, that the
8 Government would say that they thought you should go
9 home as soon as your second conviction is up;
10 correct?

11 A. Yes.

12 Q. And you told your mother you thought that
13 would be about a year and a half?

14 A. Okay. I know what you're talking about.
15 The discussion that you're talking about was a
16 separate idea that I had that had nothing to do with
17 this legal plea agreement that I signed. What I was
18 hoping to do or look into was the idea of having my
19 sentence commuted through Governor Martinez. But
20 that was obviously just a pipe dream that would
21 never come about.

22 Q. Well, it wasn't just your pipe dream,
23 though; you talked to Mark Myers about it; correct?

24 A. Yes, I did.

25 Q. And he is an employee of the Department of

1 Corrections?

2 A. Not anymore.

3 Q. Right. Because he's now working with the
4 federal government in prosecuting this case;
5 correct?

6 A. I don't know that status, ma'am. I only
7 know that the last time Mark Myers and I spoke, he
8 said he was leaving the state Corrections
9 Department. He was no longer going to be chief of
10 staff or deputy secretary.

11 Q. But you understand that he is a task force
12 officer with the federal government?

13 A. I knew he was all the way up until the
14 time of his leaving the State. As to what he's
15 doing right now, I have not had any conversations
16 with anybody about his status, ma'am.

17 Q. You had a conversation with him about this
18 clemency idea; correct?

19 A. Yes.

20 Q. And he told you that he thought you should
21 have your lawyer draft up a clemency petition to
22 submit to Governor Martinez; correct?

23 A. Yes, that he would take to her personally.

24 Q. And he would meet with her to discuss the
25 clemency petition?

1 A. Yes, ma'am.

2 Q. And that Prosecutor Armijo would also
3 speak to the Governor on your behalf with the
4 clemency petition?

5 A. I never had a discussion with Ms. Armijo
6 about that. I was hoping to have that sort of
7 conversation in the ensuing months. But again, when
8 Mark Myers announced that he was leaving, for my own
9 purposes I looked at it, like, well, then, the idea
10 is dead with it.

11 Q. When you spoke to Mark Myers, he told you
12 that Ms. Armijo had agreed to that; correct?

13 A. He said that he spoke to various folks --
14 MS. ARMIJO: Objection. Calls for
15 hearsay.

16 THE COURT: Well, what are you trying to
17 prove? What are you trying to do with it?

18 MS. DUNCAN: Your Honor, Mr. Munoz had a
19 conversation with his mother where they discussed
20 this clemency petition and promises that were made
21 to him. And one of those promises was that members
22 of the prosecution would advocate on his behalf to
23 Governor Martinez for commutation.

24 THE COURT: What are you trying to prove
25 with his statement? Are you trying to prove the

1 truth of it? If it is, I'm going to have to sustain
2 the objection.

3 MS. DUNCAN: I guess it's his expectation,
4 Your Honor, so --

5 THE COURT: Well, I think that you're
6 trying to, I think, prove the truth of the
7 statements out of court, so I'll sustain the
8 objection.

9 MS. DUNCAN: Now, Your Honor, could I have
10 one moment, please?

11 THE COURT: You may.

12 MS. DUNCAN: I have no further questions,
13 Your Honor.

14 THE COURT: Thank you, Ms. Duncan.
15 Anyone else have cross-examination of Mr.
16 Munoz?

17 MR. MAYNARD: No, Your Honor.

18 THE COURT: All right. Mr. Villa?

19 MS. JACKS: I do, just briefly.

20 THE COURT: All right, Ms. Jacks.

21 CROSS-EXAMINATION

22 BY MS. JACKS:

23 Q. Mr. Munoz, you wrote sort of a life
24 history out for Agent Acee, didn't you?

25 A. Yes, ma'am.

1 Q. And it was about 46 pages?

2 A. Maybe 42.

3 Q. 42?

4 A. 46. I'll stipulate to that.

5 Q. You took your time with it, and you went
6 through sort of your criminal lifestyle from the
7 time that you were a very young teenager up until
8 today?

9 A. Yes, ma'am.

10 Q. And I just have a couple of questions
11 about that that I want to follow up with you on.
12 First of all, do you remember what you said about
13 your role in being the driving force behind
14 virtually all of the internal SNM bloodshed for 1998
15 to 2007?

16 A. Yes.

17 Q. And what did you say?

18 A. That I was advocating and campaigning to
19 do a lot of the hits on the brothers that needed to
20 be dealt with, within the feuding that was existing
21 in the SNM between various members.

22 Q. And that you considered yourself the
23 driving force behind that violence?

24 A. Yes.

25 Q. Was that true?

1 A. Yes.

2 Q. Okay. That's still true?

3 A. Yes.

4 Q. And what did you say about your alliance
5 with Gerald Archuleta, who we've been calling Styx?

6 A. That he was my boss. He was my commander.
7 I was devoted to him and his leadership. So if he
8 assigned me a job, I was going to do it, whatever it
9 was.

10 Q. Did you say that you and Styx drove and
11 dominated the SNM narrative?

12 A. Yes.

13 Q. Now, within that context, I want to talk
14 to you about a particular assault -- well, actually
15 a particular homicide, I think.

16 A. Okay.

17 Q. And that is the homicide of David Padilla.

18 A. I don't know about a David Padilla being
19 killed, ma'am.

20 Q. Assaulted?

21 A. Yes, at the main unit in 1997, yes.

22 Q. Yes. This is some time ago.

23 A. Yes.

24 Q. I guess I want to start just by talking
25 about, was David Padilla somebody who you

1 participated in an assault on?

2 A. Yes, I assaulted him. I set that whole
3 thing in motion. And I conducted the assault on
4 him, yes, ma'am.

5 Q. And was David Padilla somebody that you
6 had an issue with?

7 A. I didn't know him, other than the
8 allegation that he was a member of the rival LC
9 Gang.

10 Q. And so because he was from a different
11 gang, you thought that the actions of -- your action
12 should be to assault him or try to kill him?

13 A. Yes, ma'am.

14 Q. And do you remember what Styx thought
15 about that idea?

16 A. He stated to me and other brothers that he
17 had had a conversation with David while they were
18 still at the orientation, being classified, whether
19 the department was going to determine if they were
20 going to come up to the general population or not.
21 They had a conversation, Gerald and David, and that
22 Gerald was satisfied with David's explanation that
23 he was not part of the gang, and we were to leave
24 him alone.

25 Q. That you should work to leave him alone?

1 A. That we were to leave him alone.

2 Q. Okay. So that was a command by the person
3 that you considered your leader within SNM?

4 A. Who I had just met. I had just met him,
5 yes, ma'am. But yes, that is the same guy.

6 Q. So Styx told you and other people, "Leave
7 this guy alone"?

8 A. Yes.

9 Q. "Don't assault him"?

10 A. Yes.

11 Q. And what did you take it upon yourself to
12 do?

13 A. To assault him anyway.

14 Q. And did you have trouble -- well, why,
15 first of all?

16 A. Well, because just not even a month or two
17 before that, three of our members were stabbed by
18 three -- or a handful of Aryan Brotherhood
19 representatives in that very same cell block and
20 location where I was living at. And our brothers
21 were deceived in much the same way that I felt David
22 could have possibly been deceiving Styx about his
23 membership, that everything was going to be okay. I
24 did not want to wake up the next morning with a
25 knife in my throat. So I figured, my calculation

1 was, I'm going to do to this guy -- to him before he
2 can do it to me.

3 Q. Kind of like the best defense is a good
4 offense?

5 A. Exactly.

6 Q. And in spite of the fact that -- I guess
7 the fact that Styx told you not to, that didn't stop
8 you from doing it?

9 A. I considered it. It was risky. A few
10 other brothers who heard that, when I approached
11 them that I was going to do it, probably advised me
12 not do it; that it would be a bad idea. So again, I
13 didn't want to get stabbed or assaulted, so I
14 decided I'm going to go ahead and assault the guy
15 first.

16 Q. And was also part of your calculation in
17 deciding to do it that if you were successful, it
18 could only enhance your reputation?

19 A. Yes, ma'am. Sure.

20 Q. So you had something personal to gain by
21 doing this.

22 A. Yeah, I had a personal motive. I mean, I
23 was a new member. I was trying to build my
24 portfolio, so to speak.

25 Q. And did you recruit some other people to

1 help you --

2 A. Yes.

3 Q. -- assault Mr. Padilla?

4 A. Yes.

5 Q. And were those also people that were
6 associates or members of SNM?

7 A. Yes, ma'am, with the exception of one guy
8 who was new. He was a prospect. So I had him
9 participate to see if he was willing to do that sort
10 of thing. But all the other members that were
11 present for that assault were brothers in the SNM,
12 yes.

13 Q. And did the people that you recruited to
14 help you -- did they know that Styx had said not to
15 assault this guy?

16 A. Yes.

17 Q. And they didn't care, and helped you
18 anyway?

19 A. Yes, ma'am.

20 Q. I want to ask you a question about the
21 murder of a guy known as Anthony Apodaca.

22 A. Okay.

23 Q. You wrote about that in your biography,
24 too; right?

25 A. Yes.

1 Q. What was his nickname?

2 A. Popeye.

3 Q. And was Popeye killed?

4 A. I believe so, yes.

5 Q. By somebody that was in SNM?

6 A. Yes, ma'am.

7 MS. ARMIJO: Objection, foundation.

8 THE COURT: Well, lay some foundation for
9 it.

10 BY MS. JACKS:

11 Q. Well, did you write in your biography
12 about the murder of Popeye?

13 A. Yes.

14 Q. And what was the source of your
15 information?

16 A. A guy named Ivan Trujillo who told me that
17 before --

18 MS. ARMIJO: Objection.

19 THE COURT: Don't tell us what he said.

20 Set up the next question.

21 BY MS. JACKS:

22 Q. Well, without telling us what Mr. Trujillo
23 told you, did you provide some information -- well,
24 let me go back. Regarding the murder of Popeye, did
25 you pass on any sort of information regarding Styx

1 or Gerald Archuleta's involvement in ordering that
2 murder?

3 A. Yes, I did.

4 Q. You did?

5 A. Yes, ma'am. His death, ma'am, has never
6 been officially listed as a murder.

7 Q. Popeye's?

8 A. Yeah.

9 Q. It's an accident?

10 A. It was an overdose.

11 Q. And is it your belief, as you sit here
12 today, that that was something that was ordered by
13 Gerald Archuleta, Styx, as the boss of the SNM?

14 MS. ARMIJO: Objection, foundation.

15 THE COURT: Lay a foundation if he knows
16 this information from personal knowledge.

17 MS. JACKS: I think he's established he
18 only knows it from somebody else, so --

19 THE COURT: Well, then we better --
20 sustained, then.

21 MS. JACKS: I think that's it, Mr. Munoz.
22 Thank you.

23 THE WITNESS: You're welcome.

24 THE COURT: Thank you, Ms. Jacks. I think
25 that's everybody.

1 Ms. Armijo, do you have redirect of Mr.
2 Munoz?

3 REDIRECT EXAMINATION

4 BY MS. ARMIJO:

5 Q. Did you ever discuss or request of the
6 prosecution team specifically anything for clemency
7 of your crime?

8 A. No, ma'am.

9 Q. Do you know, did Mark Myers tell you, in
10 fact, that he was retiring?

11 A. Yes, ma'am.

12 Q. When are you parole-eligible?

13 A. In theory, I will parole from the first
14 conviction of murder in 2037, to the remainder of
15 the second life sentence, which will expire -- I'm
16 sorry, in 2033, the 30 years will finish on the
17 first murder. If the parole board elects to parole
18 me from that, I will have to serve the remainder of
19 the second life sentence, which will expire or run
20 the 30-year point in 2037. That will be the
21 earliest time at the state level I could parole.

22 Q. And at the state level for parole, that is
23 not mandatory parole; correct?

24 A. No, ma'am. It just means that I go before
25 a board, and I lobby them and beg them to release

1 me.

2 Q. And you indicated that the move regarding
3 David Padilla was risky. Why was it risky?

4 A. Because I was defying the guy that was
5 about to come to our facility and run it.

6 Q. That being Gerald Archuleta?

7 A. Yes, ma'am.

8 Q. Why did you feel that you had to do that?

9 A. Because I didn't want to get stabbed. I
10 mean, I look at it, like, I would rather be
11 insubordinate and disobey my boss than get stabbed.

12 Q. And ultimately, after you did that, you
13 indicated that you were building your portfolio.
14 What did you mean by that?

15 A. I was developing street credit, prison
16 credit. I was demonstrating to my brothers and
17 everybody else that I was a serious person, even
18 though I was young; that I would do those sort of
19 things.

20 Q. And does doing murders increase your
21 status in the SNM?

22 A. Absolutely.

23 Q. And do they help you with your status and
24 even increase your status?

25 A. Not only within the SNM, but across all of

1 the criminal community.

2 Q. And that applies specifically to the SNM?

3 A. Yes, ma'am.

4 MS. ARMIJO: I believe that's all I have.
5 Thank you, Your Honor.

6 THE COURT: Thank you, Ms. Armijo.

7 All right. Mr. Munoz, you may step down.

8 Is there any reason that Mr. Munoz cannot
9 be excused from the proceedings? Ms. Armijo?

10 MS. ARMIJO: No, Your Honor.

11 THE COURT: How about from the Defendants?
12 Can he be excused?

13 MS. DUNCAN: Yes.

14 THE COURT: Not hearing any objection, you
15 are excused from the proceedings.

16 THE WITNESS: You have a good day.

17

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1 THE COURT: All right.

2 Ms. Armijo, does the Government have its
3 next witness or evidence?

4 MS. ARMIJO: Yes, Your Honor. Robert
5 Martinez.

6 THE COURT: Mr. Martinez, before you're
7 seated, raise your right hand to the best of your
8 ability there, and Ms. Standridge, my courtroom
9 deputy, will swear you in.

10 ROBERT MARTINEZ,
11 after having been first duly sworn under oath,
12 was questioned, and testified as follows:

13 THE CLERK: Please be seated. State and
14 spell your name for the record.

15 THE WITNESS: Robert Martinez.
16 R-O-B-E-R-T, M-A-R-T-I-N-E-Z.

17 THE COURT: All right. Mr. Martinez.
18 Ms. Armijo.

19 MS. ARMIJO: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MS. ARMIJO:

22 Q. Mr. Martinez, have you ever been a member
23 of the Sindicato de Nuevo Mexico?

24 A. I have and I am -- well, I have.

25 Q. You have?

1 A. Yeah.

2 Q. What is that?

3 A. It's a prison gang that was created after
4 the 1980 riot, and a family -- supposed to be a
5 family. In reality, we're all a bunch of killers.

6 Q. Now, when did you join -- are there any
7 other names for it, other than Sindicato de Nuevo
8 Mexico? Does it have any other shorter names?

9 A. No, it doesn't.

10 Q. What about SNM?

11 A. SNM, the letters S-N-M from the alphabet,
12 or just the letter S.

13 Q. You've heard it referred to as SNM or the
14 S?

15 A. The S.

16 Q. And when did you join SNM?

17 A. 1988.

18 Q. And were you in prison at the time?

19 A. I was.

20 Q. And who brought you in, if anybody?

21 A. I can't honestly say I was brought in. I
22 mean, I've always -- ever since I started doing
23 time, I've always been associated with somebody,
24 associated with the SNM in one way or another, even
25 before I knew what the SNM was.

1 Q. And so in 1986 -- you indicated it was
2 1986, then, that you think you officially became a
3 member?

4 A. '88.

5 Q. 1988, sorry. 1988?

6 A. '88.

7 Q. Now, I guess that leads us to talk
8 about -- continue talking about the S. Did you do
9 something --

10 MS. ARMIJO: Move for the admission of
11 Exhibit Number 244, without objection, Your Honor.

12 THE COURT: All right. Any objection?

13 Not hearing any objection from the
14 Defendants, Government's Exhibit 244 will be
15 admitted into evidence.

16 (Government Exhibit 244 admitted.)

17 BY MS. ARMIJO:

18 Q. And can we please go to the first page of
19 244?

20 All right. And you may not have had an
21 opportunity to review this document, but do you see
22 that it has your name on that document?

23 A. Yes, ma'am.

24 Q. And is that your NMCD number?

25 A. Yes, ma'am.

1 Q. All right. So I'm going to start first
2 with going back to what is Bates stamp 8956.

3 A. It's kind of hard for me to see without my
4 glasses.

5 Q. Oh, sorry. Let's see --

6 THE COURT: Do you use these, or do you
7 use something prescription?

8 THE WITNESS: I have prescription,
9 bifocals. I have, like, this close, it just looks
10 like blotches. The further I am away from it, the
11 better I can see it.

12 BY MS. ARMIJO:

13 Q. All right. You know what? I can actually
14 hand -- if I hand it to you, will you be able to see
15 it a little bit better?

16 THE COURT: Does the witness know it's up
17 there?

18 MS. ARMIJO: Yes. But if he can see
19 that -- I have a hard time reading that.

20 A. I can see it a little bit.

21 MS. ARMIJO: May I approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 A. Yeah, I can see it a little better.

25

1 BY MS. ARMIJO:

2 Q. A little better now. All right. And were
3 you convicted in 1983 of a robbery?

4 A. I was.

5 Q. All right. And does that appear to be the
6 judgment and sentence in relationship to that?

7 A. Yes, ma'am, it does.

8 Q. And how old were you in 1983?

9 A. 18.

10 Q. And how old are you now?

11 A. I'm going to be 54, now, in March.

12 Q. Do you have a nickname within the gang?

13 A. Do I have what?

14 Q. A nickname in the gang?

15 A. They call me Baby Rob.

16 Q. All right. Now, after receiving that, the
17 robbery, do you also have a conviction for
18 second-degree murder?

19 A. I do.

20 MS. ARMIJO: And I'm going to ask to
21 display 8960, please.

22 May I approach the witness, Your Honor?

23 THE COURT: You may.

24 BY MS. ARMIJO:

25 Q. All right. And does that appear to be

1 your conviction for second-degree murder?

2 A. Yes, ma'am, it does.

3 Q. And this occurred -- do you recall when
4 this occurred approximately?

5 A. 1988.

6 Q. And what were you sentenced to; do you
7 recall?

8 A. 39 and a half years.

9 Q. All right. And then I'm going to go to --
10 and then based upon that, were you sent to prison?

11 A. I was.

12 Q. All right. Now I'm going to go to Bates
13 8964.

14 MS. ARMIJO: If I may approach, Your
15 Honor?

16 THE COURT: You may.

17 BY MS. ARMIJO:

18 Q. Are you familiar with this?

19 A. Yes, ma'am, I am.

20 Q. And how so? Is this the judgment of
21 yours?

22 A. Yes, ma'am, it is.

23 Q. And does it indicate for aggravated
24 battery with a deadly weapon and possession of a
25 deadly weapon by a prisoner from 1984?

1 A. Yes, ma'am, it does.

2 Q. I'm sorry, 1994?

3 A. Yes, ma'am, it does.

4 Q. All right. And how long were you
5 sentenced in this case, if you recall?

6 A. That one --

7 Q. And we can go --

8 A. About 25 and a half years.

9 Q. All right. And I'm going to go to the
10 next page. Was there also a conspiracy count?

11 A. Yes, ma'am.

12 Q. And so the sentence in this was
13 approximately how long, do you recall?

14 A. 25 and a half.

15 Q. And did this occur while you were
16 incarcerated?

17 A. Yes, ma'am, it was.

18 Q. Okay. And we'll get into the facts in a
19 moment.

20 And then next we're going to go into Bates
21 8967.

22 MS. ARMIJO: If I may approach, Your
23 Honor?

24 THE COURT: You may.
25

1 BY MS. ARMIJO:

2 Q. Is that another conviction of yours?

3 A. Yes, ma'am, it was. Yes, ma'am, it is.

4 Q. And is that from 2002?

5 A. Yes, ma'am.

6 Q. Is this for aggravated battery? It
7 appears to be -- let's see. Oh, I should say -- and
8 I believe in the second paragraph, it was convicted
9 pursuant to a finding of guilty of aggravated
10 battery?

11 A. Yes, ma'am, it is.

12 Q. Okay. And it indicates that occurred in
13 March of 2000. And it might be in front of you, as
14 well, if that helps you. There we go.

15 A. Yeah, that's better.

16 Q. Thank you.

17 A. March 15, 2000.

18 Q. Yes.

19 A. Yeah.

20 Q. And I believe right here it says
21 conspiracy --

22 A. To commit aggravated battery, a fourth
23 degree felony.

24 Q. Where did that crime occur?

25 A. Santa Fe County.

1 Q. Okay. Was that while you were
2 incarcerated?

3 A. Yes, ma'am.

4 Q. And how long did you receive on that; do
5 you recall?

6 A. Nine and a half. Nine and a half years.

7 Q. Let's go to page 8969, and maybe we can
8 bring that up a little bit.

9 A. Okay. Yeah. It's 20 and a half years.

10 Q. Okay. And it indicates that that's going
11 to be served consecutive to one of your other cases?

12 A. Okay. I was incorrect. That was
13 committed in Southern New Mexico Correctional
14 Facility. That happened here at Southern.

15 Q. Okay. And it's 20 years consecutive to --
16 it says your number is 94-580; is that correct?

17 A. Yes, it's consecutive.

18 Q. Okay. And then, going to Bates 8971 --
19 all right. And if we can -- this appears to be from
20 2008, battery on a peace officer?

21 A. Yeah. That was in Santa Fe for the nine
22 and a half years.

23 Q. Okay. And then I believe -- can we get
24 the bottom blown up a little bit?

25 Is this the one that you were confusing

1 earlier?

2 A. Yes, ma'am.

3 Q. All right. Then, actually go to page 8973
4 of this document. Mr. Martinez?

5 A. Yes, ma'am.

6 Q. How many years do you still have to go?

7 A. How many years do I still have to do? I'm
8 doing 25 and a half now, seeing the parole board in
9 2026. Then I have to jump to the 20 and a half,
10 which I have to do 85 percent of that, so 18 years
11 of that. And then after that, when I jump to the
12 nine and a half, I have to do 85 percent of that.
13 So that's seven years of that. So altogether, about
14 25 more years.

15 Q. Excuse me. Did you actually at one point
16 calculate when you would be parole-eligible
17 potentially, if everything goes well with you, with
18 the parole board?

19 A. Actually, I never even thought about it.
20 Are you talking about at the time I committed these
21 crimes or --

22 Q. Oh, no, just recently, or any time.

23 A. I never really thought about it. I never
24 thought I'd get out.

25 Q. All right. Because in order for you to

1 move from one sentence to the next, you have to be
2 granted parole; is that correct?

3 A. Yes, ma'am.

4 Q. And then you indicated -- I believe you
5 have the year -- so let's see, you have how much
6 left on -- or when is your next one?

7 A. On the 25 and a half that I'm doing now.

8 Q. Okay.

9 A. I'm hoping to see the parole board in
10 2026.

11 Q. Okay. And then, if you're granted
12 parole -- is that discretionary, I should ask, or do
13 you know?

14 A. You mean up to the parole board?

15 Q. Yes.

16 A. Yeah -- well, I mean, I think I'll be
17 granted parole, regardless. But I mean, that's what
18 I'm expecting.

19 Q. And then you start another sentence?

20 A. I do.

21 Q. And how long is that one?

22 A. 20 and a half.

23 Q. 20 and a half years?

24 A. Yes, ma'am.

25 Q. And that would start potentially in the

1 year 2026; correct?

2 A. 2026.

3 Q. And then --

4 A. Add 18 years to --

5 Q. Then 18 years on top of that; is that
6 correct?

7 A. Yes, ma'am.

8 Q. All right. Sorry. I don't trust my math.

9 A. 2034.

10 Q. So we have 2026, we are eight years to
11 that one; and then 20.5, and then 18.5. So that's
12 47 years?

13 A. It's 2044, right.

14 Q. That's approximately, if it's eight years
15 from now, until the year 2026; correct?

16 A. Right.

17 Q. And then you have 20.5 years on the other
18 one; correct?

19 A. With 18 years to do on that one.

20 Q. With 18 years to do on that one?

21 A. Yeah.

22 Q. So out of the 20 years, you're going to do
23 18, or you have another sentence on top of that?

24 A. No, 20 years. I'll do 18.

25 Q. So you'll do 18 years out of the 20. And

1 is that it? You have one more?

2 A. Nine and a half.

3 Q. Okay. Plus nine. Okay. So 35 more
4 years, approximately?

5 A. Okay, 35.

6 Q. Would that be about right?

7 A. Yeah.

8 MS. ARMIJO: I'm also going to move at
9 this time to admit Government's Exhibits 666 and
10 665, without objection.

11 THE COURT: Any objection to those two
12 exhibits?

13 Not hearing any, Government's Exhibits 666
14 and 665 will be admitted into evidence.

15 (Government Exhibits 665 and 666
16 admitted.)

17 MS. ARMIJO: And can we please show 665?

18 BY MS. ARMIJO:

19 Q. Mr. Martinez, what are we looking at?

20 A. That's a picture of me when I was 18 years
21 old.

22 Q. All right. And let's go to Exhibit 666.
23 What is that a picture of?

24 A. Of me, in 1988.

25 Q. All right. Thank you.

1 Now, so after the murder that you
2 committed, is that when you went in, and you've been
3 in since then; is that correct?

4 A. Yes, ma'am.

5 Q. And how old were you when you committed
6 the murder?

7 A. I was 22.

8 Q. And so you've been in since then; is that
9 correct?

10 A. Yes, ma'am.

11 Q. And all of those other felonies were
12 committed while in the Corrections Department?

13 A. They were.

14 Q. Now, you talked a little bit about the
15 SNM. What sort of rules did the SNM have when you
16 joined?

17 A. What kind of rules?

18 Q. Do they have any rules?

19 A. I mean, as far as structure, I mean, there
20 was always somebody -- depending on what facility
21 you were in at that time, there was the Main
22 facility, the South facility, there was Central,
23 there was Southern. And depending what facility you
24 were in, depending on who was calling the shots,
25 there was always somebody there that was going to

1 call the shots. As far as reglas, we call them
2 rules and regulations.

3 Q. Yes.

4 A. We never really had that, other than,
5 number one, you can't be a rat. You can't be a
6 child molester. Those were the two main ones. Or
7 sexual crimes.

8 Q. Okay. So you can't be a child molester;
9 is that right?

10 A. That's right.

11 Q. And you can't be a rat. What does a rat
12 mean?

13 A. Snitching; what I'm doing.

14 Q. All right. And that's one of the big
15 rules that you can't break; is that correct?

16 A. That's true.

17 Q. And what is the penalty for that?

18 A. Death.

19 Q. Now, you indicated that there's different
20 facilities, and that there's usually a person that's
21 kind of in charge. Is there a term for that?

22 A. Jefe, shot-caller; usually just those two.

23 Q. If you've been in since '88, you've been
24 in the SNM in the '80s, '90s, the 2000s, and into
25 the 2000-teens. So that's over the course of four

1 decades?

2 A. Yes, ma'am.

3 Q. Not that I want to age you any.

4 A. That's fine.

5 Q. Have you seen changes in the SNM over that
6 time period?

7 A. A lot of changes.

8 Q. Now, have you heard of the term "tabla"?

9 A. Yes, ma'am, I have.

10 Q. What's tabla within the SNM?

11 A. Yes, it was.

12 Q. What is it?

13 A. It's a group. It's like a group of three
14 brothers. It's like the tabla, usually there was
15 five, but sometimes we had three. And those band of
16 brothers were the ones who more or less called the
17 shots for the SNM.

18 Q. And would there be -- so there was a
19 tabla. Would there be at times an overall leader?

20 A. There would be, and depending on who it
21 was.

22 Q. When you joined, who was the overall
23 leader?

24 A. At that time, Marty Barros, Felipe
25 Cordova, old-timers.

1 Q. And from what you understand, were those
2 the people that actually started SNM when it
3 started?

4 A. No.

5 Q. Who were the starting members, if you even
6 know?

7 A. We call them our godfathers. That was
8 Juan Baca, Tom Coval, Tomas Campos, Kedrick Duran.
9 These are people that go back before the riot,
10 during the riot, and they were the ones that created
11 the SNM.

12 Q. And then -- so you mentioned several
13 people. Did you know of a -- were you ever on the
14 tabla?

15 A. I was.

16 Q. When did you first get on the tabla?

17 A. '90s. I'd say throughout the '90s into
18 the 2000s.

19 Q. And who were different people on the tabla
20 with you?

21 A. There was me, there was Rupert Zamora,
22 Arturo Garcia, Ray Baca -- well, Arturo Garcia,
23 Rupert Zamora. Who else? Fernie Hernandez.
24 Because it varied through the years.

25 Q. Would it vary on where you were located?

1 For instance, would there be a different tabla at
2 Southern versus the North at PNM?

3 A. Not necessarily. Because sometimes you
4 drive up to Southern, and there would just be one
5 shot-caller; there would be just one person there
6 that would call the shots.

7 Q. All right. Was the tabla above the
8 shot-callers of the different facilities?

9 A. That depended on whether or not he was
10 doing his job.

11 Q. "He" being who?

12 A. Whoever that shot-caller was. I mean,
13 hypothetically, like if I drove up to Southern and
14 we had a shot-caller there and he wasn't doing his
15 job, I would step up and do it.

16 Q. "You" being somebody on the tabla?

17 A. Or me being in the SNM, for the amount of
18 years I've been in there.

19 Q. Have you ever heard of a person named
20 Billy Garcia?

21 A. I have.

22 Q. Was he ever on the tabla or a leader of
23 sorts?

24 A. He was a leader. He was never on the
25 tabla, but he was a shot-caller.

1 Q. All right. Now you mentioned somebody by
2 the name of Ray Baca?

3 A. Right.

4 Q. Who is Ray Baca?

5 A. We call him Pup. He's sitting in the
6 back, with the bald head.

7 Q. Okay. What is he wearing?

8 A. Looks like a black sweater.

9 MS. ARMIJO: May the record identify
10 Anthony Baca?

11 THE COURT: The record will so reflect.

12 BY MS. ARMIJO:

13 Q. Okay. Is his first name Anthony, and his
14 middle name Ray?

15 A. Yes, ma'am.

16 Q. Does he more commonly go by Ray Baca, as
17 opposed to Anthony? You mentioned Ray Baca.

18 A. He goes by Pup. I've always known him as
19 Pup.

20 Q. Do you know how he got the nickname Pup?

21 A. I don't.

22 Q. And was he or is he a leader of the SNM?

23 A. Yes, he is.

24 Q. And do you recall when you first met him?

25 A. I've known him for 30 years, if not

1 longer. I mean, we used to live -- when I came back
2 on my parole violation, 39 and a half years, we
3 lived together in cell block 4, north side, for a
4 little while. And off and on throughout the years
5 we've lived together.

6 Q. And so -- and you've known him since what
7 year, I'm sorry, could you say again, approximately?

8 A. We lived together in '88. I've known him
9 for like, 30 years, if not more.

10 Q. So did you -- do you know whether or not
11 Pup had a structure within the SNM?

12 A. He did. We did.

13 Q. "We did," you said?

14 A. He did, we did. I mean --

15 Q. Was he above you?

16 A. Yes, he was.

17 Q. All right. And you mentioned that
18 throughout different times -- and I'm going to go
19 now to the '90s --

20 A. Okay.

21 Q. -- you were on the tabla at that time?

22 A. I was throughout the '90s, when he was out
23 of state. When he was out of state was more or less
24 when the tabla was created.

25 THE COURT: Ms. Armijo, could we take

1 these up after the break?

2 MS. ARMIJO: Sure.

3 THE COURT: Let's be in recess about 15
4 minutes. All rise.

5 (The jury left the courtroom.)

6 THE COURT: All right. We'll be in recess
7 for about 15 minutes.

8 (The Court stood in recess.)

9 THE COURT: All right. Anything we need
10 to discuss before we bring the jury in? Ms. Armijo?
11 Mr. Beck?

12 MR. BECK: Yes, Your Honor.

13 THE COURT: There is something? Go ahead.

14 MR. BECK: So with regard to the issue
15 yesterday with Mr. Baca, I think I've got the
16 evidence that we need under 104(b) to now bring in
17 the murder conviction. And I'd direct the Court to
18 our exhibit, Government's Exhibit 305, which is a
19 recorded conversation by Mr. Baca. That's one that
20 hasn't been admitted yet, but will be admitted.

21 THE COURT: Will be admitted?

22 MR. BECK: Yes.

23 THE COURT: What pages do I need to look
24 at?

25 MR. BECK: It's a rather short transcript.

1 THE COURT: Do you have a copy for me? I
2 can probably dig it out. But do you have a copy for
3 me?

4 MR. BECK: I have a copy that I can give
5 to you.

6 THE COURT: This is Exhibit 305?

7 MR. BECK: This is Exhibit 305. It's not
8 marked on here, but it's what is Exhibit 305. And
9 the context of the conversation should make clear
10 that it is an SNM --

11 THE COURT: Who is talking on this one?

12 MR. BECK: It's Mr. Baca and Eric Duran.

13 THE COURT: All right. If you'll give me
14 a copy of the transcript.

15 Ms. Duncan, do you know what he's talking
16 about?

17 MS. DUNCAN: Yes, Your Honor. I know the
18 conversation he's talking about. It's a
19 conversation from Mr. Baca and Eric Duran. I agree
20 that they're talking about the murder for which Mr.
21 Baca was convicted. I completely disagree with the
22 way that he's characterizing it as an SNM-involved
23 hit. And I don't think it meets the burden under
24 Rule 104.

25 THE COURT: All right. I'll take a look

1 at it. Give it to Ms. Standridge up here.

2 MR. BECK: There may be. Well, we'll
3 clear it up. The Court will see.

4 THE COURT: All right. All rise.

5 (The jury entered the courtroom.)

6 THE COURT: All right. Mr. Martinez, I'll
7 remind you that you're still under oath.

8 Ms. Armijo, if you wish to continue your
9 direct examination of Mr. Martinez, you may do so at
10 this time.

11 MS. ARMIJO: Thank you, Your Honor.

12 THE COURT: Ms. Armijo.

13 BY MS. ARMIJO:

14 Q. Mr. Martinez, I believe we were talking
15 about the tabla a little bit before the break, and
16 we were talking about Anthony Ray Baca. Now, at
17 some point was he moved out of state? And I'm going
18 to go back into the 1990s.

19 A. He was sent out of state twice.

20 Q. Okay. The first time that he was sent out
21 of state, was something created, as far as the SNM,
22 for purposes of running the SNM?

23 A. If I'm correct, that was the '90s, or I
24 would say, yeah, that's when we created the tabla.

25 Q. Okay. And now, even though there was the

1 tabla, who was on top of the tabla?

2 A. Nobody.

3 Q. What about Mr. Baca?

4 A. If he was to come back from out of state,
5 he would be.

6 Q. Okay. So he was out of state and the
7 tabla was created to run the SNM; correct?

8 A. Correct.

9 Q. And when he got back into the state, he
10 would be on top of the tabla, so to speak?

11 A. Well, he'd probably be -- with him and the
12 respect that he had from all the brothers, he'd
13 probably be the only shot-caller.

14 Q. Okay. So there would be no need for a
15 tabla?

16 A. No.

17 Q. Now, do you know Daniel Sanchez?

18 A. I do.

19 Q. And do you see him in the courtroom today?

20 A. The gentleman with the glasses, blue
21 sweater, red tie.

22 MS. ARMIJO: May the record reflect
23 identification of the Defendant Daniel Sanchez?

24 THE COURT: The record will so reflect.
25

1 BY MS. ARMIJO:

2 Q. And how do you know Daniel Sanchez?

3 A. SNM. I consider him a brother, a carnal;
4 I've known him for about, I'd say, 20 years maybe.

5 Q. And did he have a nickname within the
6 gang?

7 A. Dan Dan.

8 Q. How about Carlos Herrera?

9 A. I know him, as well.

10 Q. Do you see him in the courtroom today?

11 A. He's behind you. He's wearing a blue
12 jacket, light blue shirt.

13 MS. ARMIJO: May the record reflect
14 identification of Carlos Herrera?

15 THE COURT: The record will so reflect.

16 BY MS. ARMIJO:

17 Q. How long have you known Carlos Herrera?

18 A. I'd say about 15 years, maybe.

19 Q. Did he have a nickname in the gang that
20 you know of?

21 A. Lazy.

22 Q. And referring to Daniel Sanchez, did I
23 already ask you? I'm sorry, did he have a nickname?

24 A. Did he have a what?

25 Q. Did he have a nickname within the gang?

1 A. Everybody knew him as Dan Dan.

2 Q. Now, when we discussed your criminal
3 history, you indicated that after your second-degree
4 murder, all of those were committed within the
5 Department of Corrections?

6 A. Yes, ma'am.

7 Q. Were any of those related to SNM activity?

8 A. I would say the 20 and a half that I
9 picked up here in Southern in 2002, and I would say
10 the one here in Southern --

11 Q. And what was --

12 A. -- in 2002.

13 Q. -- that related to?

14 A. You're talking about the victim, or what
15 were the circumstances to the crime?

16 Q. The circumstances.

17 A. I can't remember his name. But the dude
18 we assaulted killed one of our brothers in -- I
19 think it was 1991, north side, cell block 5. The
20 carnal's last name was Pacheco. And he had been
21 walking the line in Southern for a couple of years
22 when I drove up. So -- and I took it upon myself to
23 take care of family business.

24 Q. Okay. You said a couple of things I want
25 to cover.

1 A. Okay.

2 Q. You said "walking the line." What does
3 "walking the line" mean?

4 A. In general population, general population,
5 just going to work, going to school, going to the
6 yard, going to the gym.

7 Q. Okay. So that's different from being in
8 segregation?

9 A. Yes, ma'am.

10 Q. And then you mentioned that he had killed
11 an SNM brother?

12 A. Yeah.

13 Q. So you took it upon yourself to do
14 something about that?

15 A. At the time, the shot-callers there in
16 Southern, they called him Sexy Walker.

17 Q. They called him what?

18 A. They called him Sexy Walker. That was his
19 nickname. His name was Leno G. And the other one
20 was -- his nickname was Tibo, Nick Chavez. They
21 were the ones that were running the line at Southern
22 at that time. I had drove up. I did a week in
23 orientation. Then I went to the line for a week.

24 And I was out in the yard one day, and
25 they come up -- there was a couple of brothers out

1 there -- there was a couple brothers out there in
2 the yard. I was working out by myself. A couple
3 brothers come up to me, tell me, "Hey, isn't that
4 the guy that killed the carnal Pacheco in '91?"

5 Q. Then what did you do?

6 A. At that time, I told them, "I don't know.
7 You tell me."

8 And that's when they said, "That's him.
9 That's him."

10 I ran around looking for a shank. I
11 couldn't find one.

12 Q. So what did you do?

13 A. Picked up a rock and busted his head open.

14 Q. And did he survive?

15 A. Yes, he did.

16 Q. Now, some of your convictions, or at least
17 one of them was for aggravated assault on a peace
18 officer?

19 A. Yeah.

20 Q. What did that entail?

21 A. 2000s, 2005, -6, -7, there at the North
22 facility, everybody was pretty much going at each
23 other.

24 Q. When you say "everybody," what are you
25 referring to?

1 A. I mean, people were slipping cuffs, people
2 were slipping their handcuffs, and going at rivals.
3 And I moved on a couple of COs.

4 Q. When you say you "moved on a couple COs,"
5 what do you mean?

6 A. Sliced them; you know, tried to assault
7 them.

8 Q. And is that something that, during that
9 time period, was common with the SNM?

10 A. If the CO disrespected you, I would say it
11 was.

12 Q. Well, let me talk a little bit about
13 disrespect. As an SNM Gang member, if somebody
14 disrespects you, can you just let that go, or do you
15 have to do something about it?

16 A. Well, it will make you look bad.

17 Q. Okay.

18 A. It will make you look weak.

19 Q. So then what do you have to do if somebody
20 disrespects you?

21 A. You have to do what you have to do, beat
22 them down, stab them, whatever. I mean, because --
23 I mean, to me, if I'm with one of my brothers and
24 somebody starts bad-mouthing him, starts talking
25 shit to him and he doesn't do anything, in my eyes

1 he looks weak. And I don't want a brother like
2 that.

3 Q. Okay. Starting in the 1990s, were drugs
4 part of SNM culture? I don't mean starting, but I'm
5 referring to the 1990s.

6 A. That's always been our habit. Drugs have
7 always been our habit.

8 Q. Did you know anybody named Dennis
9 Trujillo?

10 A. I did. He's passed away.

11 Q. And who was Dennis Trujillo?

12 A. He was a brother. They called him White
13 Bear. He was a carnal.

14 Q. And where was he in the 1990s, do you
15 recall?

16 A. He lived -- at that time I lived in cell
17 block 3. He lived south side, cell block 4.

18 Q. And what unit are we talking about?

19 A. Old Main facility.

20 Q. And the Old Main facility -- do you know
21 what year that closed?

22 A. If I'm correct, I think it closed, like,
23 '97, I think.

24 Q. And was that where the riots took place?

25 A. Yes, ma'am.

1 Q. Now, paperwork. What's paperwork in
2 relationship to the SNM?

3 A. If you're a rat, there is paperwork on
4 you. It comes -- like me, for example, I'm
5 testifying in this case. They get paperwork on me.
6 They can go around showing it to other brothers,
7 tell them, "Hey, look, Baby Rob is a rat."

8 And right there, I put a target on my
9 back. I'm marked for death, in other words.

10 Q. Okay. What can paperwork consist of?

11 A. What do you mean?

12 Q. Does it have to be a certain item, like a
13 police report, or could it be your testimony here
14 today?

15 A. Statements or tape recordings.
16 Statements, transcripts, tape recordings. That's
17 usually what it consists of.

18 Q. Now, I want to go back to 2013 -- well,
19 no, let me go back to 2011. Where were you housed;
20 do you recall?

21 A. 2011, I was probably at the North
22 facility. That's where I've done the majority of my
23 time.

24 Q. Okay. At the North facility?

25 A. Yes, ma'am.

1 Q. One quick question about the Main. We
2 were talking about Dennis Trujillo. Had he brought
3 drugs into the Main?

4 A. One of the main ones.

5 Q. One of the main ones bringing drugs into
6 the Main?

7 A. Yes.

8 Q. And did he distribute -- "he" being Dennis
9 Trujillo -- did he distribute those drugs to other
10 people?

11 A. Yeah.

12 Q. And "other people" being other inmates?

13 A. Yeah. Yes, ma'am.

14 Q. Now, Javier Molina. Do you know who that
15 was?

16 A. I knew the name. But I've never done time
17 with him.

18 Q. Okay. And I believe we were talking
19 about -- let's go to 2011. Do you know somebody by
20 the name of Alex Sosoya?

21 A. I do.

22 Q. Who was Alex Sosoya?

23 A. He was a carnal. He was a carnal -- or is
24 a carnal.

25 Q. Okay. And I notice you say he was or

1 is --

2 A. I say "was," because I renounced. I'm no
3 longer a part of the SNM. And I say he was, or he
4 is. He's on the streets. But he's a carnal.

5 Q. Did you have issues with him?

6 A. I did.

7 Q. When did those issues start?

8 A. I'd say around 2005, -6, -7, somewhere
9 around there. We were at the North facility. We
10 were all there. They have housing units. 1A, 1B,
11 2A, 2B, 3A, 3B. I'm in 3B V pod. He's in, I think,
12 W or X pod. I get a knock on the wall one day. And
13 Carlos Herrera was my neighbor. And he tells me
14 underneath the bunk, he says, "Hey, if dude gives
15 you something," he tells me, "be careful."

16 I told him, "What are you talking about?"

17 And Carlos Herrera told me, he said that
18 he was out in the yard running his mouth, talking to
19 the other brothers saying that I, along with Gerald
20 Archuleta and Arturo Garcia -- that we're the ones
21 that had the onda all fucked up, and all they care
22 about is getting high, and the onda would be much
23 better off if we were out of the picture.

24 So to me, I took that to mean that no
25 matter how you word it, you're talking about trying

1 to take me out. So I put a green light on him.

2 Q. Okay. You said several things I want to
3 go back on.

4 A. Okay.

5 Q. Talk about the onda. What's that?

6 A. The family, the SNM.

7 Q. And you mentioned that several people
8 there talked about you and Arturo Garcia?

9 A. Right.

10 Q. And do you know Arturo Garcia's nickname?
11 And if you don't remember it, that's fine.

12 A. I can't remember it right off the top of
13 my head. Shotgun.

14 Q. And Gerald Archuleta?

15 A. I know him. They call him Styx.

16 Q. And you mentioned that you had issues with
17 the three of you. Were you all part of the tabla?

18 A. We were.

19 Q. And you mentioned that Carlos Herrera
20 knocked on your wall. Were you referring to -- did
21 you share a common cell with him?

22 A. We were neighbors.

23 Q. And could you talk through the vents, or
24 under -- you could talk through --

25 A. You could talk through the vent, you could

1 talk underneath the bunk, and then you could talk at
2 the door. But he called me underneath the bunk.

3 Q. Okay. And you can communicate that way?

4 A. Yes, ma'am.

5 Q. All right. So Carlos Herrera told you
6 something that led you to believe that, for lack of
7 better terms, Alex Sosoya was disrespecting you; is
8 that correct?

9 A. He was putting -- to me, he was talking
10 about trying to take me out. In other words, trying
11 to get me killed.

12 Q. So what did you do in turn?

13 A. I put a green light on him.

14 Q. Now, was that green light acted upon
15 initially?

16 A. By me.

17 Q. Okay. Did it take some time for you to be
18 able to act on that?

19 A. It did.

20 Q. Okay. And when was it that you were able
21 to act on that green light?

22 A. I think it was 2011.

23 Q. Okay. And where were you?

24 A. In South facility in Santa Fe.

25 Q. Okay. So you mentioned that this issue

1 that came up was a few years before, at least;
2 correct?

3 A. Correct.

4 Q. And so I'm assuming that you weren't
5 living with Mr. Sosoya that whole time?

6 A. He was living next door to me in one of
7 the other pods.

8 Q. That whole time? Or did you separate and
9 then find yourselves, in 2011, in the same vicinity
10 again; do you recall?

11 A. He ended up paroling. Then he ended up
12 coming back on parole. And when he came back on his
13 parole violation, we were living together in S pod.

14 Q. Okay. And would that be, then, in 2011,
15 approximately?

16 A. That was before 2011. That was before he
17 and I went to the South facility. We were both
18 there together there at the North.

19 Q. And did the problems remain?

20 A. He confronted me. He asked me if I put a
21 green light on him. And I told him yes, and I told
22 him why.

23 Q. All right. And then what happened?

24 A. I just told him, you know, "I'm not going
25 to talk shit about you. I'm not going to disrespect

1 you. When the time comes, we'll handle our
2 business."

3 And it continued like that for a little
4 while. Then eventually, I ended up going to the
5 South facility. And then he showed up, they put him
6 as my neighbor.

7 Q. Did that work out very well?

8 A. Not in the long run.

9 Q. Tell us what happened.

10 A. While he was my neighbor, and I knocked on
11 the wall and he asked me, he goes, "Who is that?"

12 I told him, "Figure it out." I told him,
13 Look, I told him, "They're going to keep you on
14 orientation for two weeks. When you come out, we'll
15 go in the yard and we'll talk about this."

16 I guess he tried to intimidate me or
17 something, because he said, "Well, I'm kind of a big
18 guy."

19 I told him, "That doesn't mean nothing,"
20 so --

21 Q. Was he bigger than you?

22 A. He was.

23 Q. And was this disagreement between you two
24 known amongst other SNM members that were with you?

25 A. It was. I mean, to me, it was SNM

1 business. At that time, I was one of the
2 shot-callers, and to me it was SNM business.
3 Because, like I said, it doesn't matter how he
4 worded it. To me, he's talking about taking out the
5 hit.

6 Q. Do you know somebody by the name of Mario
7 Rodriguez?

8 A. I do.

9 Q. Was he living with you at the time?

10 A. He was.

11 Q. Was he -- did you make him aware of this
12 situation?

13 A. I did.

14 Q. Or was he aware of the situation?

15 A. He knew about it.

16 Q. And did there come a point in time when
17 the two of you acted upon this issue that you had
18 with Alex Sosoya?

19 A. We did.

20 Q. And how is it that he was involved, if you
21 know? I mean, did he say, you know, "I'm going to
22 support you," did you recruit him, or --

23 A. I didn't recruit him. I mean, he was a
24 brother. But he was a soldier. He was down to do
25 whatever needed to be done.

1 Q. Did he tell you, in fact, that he wanted
2 to have your back on this issue?

3 A. I mean, I had -- when we were all there,
4 it was me, Blue, and a couple other brothers;
5 another brother named Robert Lovato, Sr., and
6 Benjamin Clark. We were all living on the top tier.
7 And I went to each and every one of them and told
8 them, "You know what, fall back. I'll take care of
9 this by myself."

10 Every one of them said okay, except Blue.
11 Blue said, "No, fuck that. I'm going with you."
12 Excuse the language, but --

13 Q. That's okay. Is that what he said?

14 A. Yeah.

15 Q. Okay. Now, so there was an incident,
16 then, that -- outside in the rec yard?

17 A. Yes, ma'am.

18 Q. And what happened?

19 A. We moved on him. I mean, we were in the
20 yard. The COs -- it so happened the Deputy Warden
21 happened to escort us to the yard that day. And as
22 soon as they put us in the yard, we started playing
23 basketball. And I guess maybe about 10, 15 minutes
24 passed by. We stopped playing basketball for a
25 little while. We had brothers in the next yard to

1 us.

2 Q. Okay. Were they separated from you?

3 A. There is the top tier. They didn't mix
4 the bottom tier with the top tier. And when we went
5 to the yard, we were in separate yards and we were
6 separated by chain link fences.

7 Q. Okay.

8 A. So during that break, a few of the
9 brothers went up and started talking to brothers in
10 the other yard. And I kind of stood back. And I
11 don't know what happened, but I guess a couple of
12 the brothers started arguing, and Churo happened to
13 be standing by the basketball court, and I seen Blue
14 move towards him, and I knew what he was going to
15 do. I could see he was going to move on him. So he
16 did. He hit him from behind. And I came and hit
17 him from the side.

18 Q. Okay. Churo. Who is Churo?

19 A. Alex Sosoya.

20 Q. So you saw Blue kind of go after him --

21 A. I did.

22 Q. -- and then you joined in?

23 A. I did.

24 Q. And did you all have any weapons?

25 A. We had homemade shanks. They were melted

1 plastic, melted plastic out of hot pots. We had hot
2 pots at that time, which we used to heat up water in
3 our cells. And we melted them down and made shanks
4 out of them; wrapped pieces of cloth around them,
5 and used those.

6 Q. Did you actually stab Sosoya?

7 A. I lost possession of mine. When I first
8 jumped on him, mine fell out of my hand and he
9 grabbed ahold of it. Well, he was never able to use
10 it.

11 Q. Okay. And did you then start attacking
12 him?

13 A. We did. We continued attacking him until
14 I got hit in the head with -- one of them gas
15 grenades hit me in the head. And it was like gas is
16 what affected me, that stopped me from assaulting
17 him.

18 Q. Is it fair to say that Corrections had to
19 use a great deal of nonlethal items to try and stop
20 the fight?

21 A. They said they were within seconds of
22 using live rounds. So I would say yeah.

23 Q. And did you end up having to go to the
24 hospital?

25 A. I spent two days in the hospital.

1 Q. What injury did you have?

2 A. When the gas grenade hit me in the
3 forehead, it busted my forehead open. When they
4 gave me a CAT scan, they said the pressure of it
5 hitting me in the forehead caused the front of my
6 brain to bleed. And if it continued to bleed, I
7 could slip into a coma.

8 Q. So you were hospitalized for two days?

9 A. I was.

10 Q. And are you aware -- or did you see Mario
11 Rodriguez, if he did anything to Alex Sosoya?

12 A. He was the one that choked him out.

13 Q. And did you see him bite his ear or not?

14 A. I couldn't see that.

15 Q. Were you made aware of that later?

16 A. Yeah.

17 Q. So after that incident, did you get in
18 trouble with Corrections for that?

19 A. I got sent back to the North facility for
20 a couple of years.

21 Q. And that was in 2011?

22 A. Yes, ma'am.

23 Q. Okay. North facility being the highest
24 level?

25 A. Level 6 at that time.

1 Q. And then do you eventually make your way
2 down to the South again?

3 A. I went back to the South in 2013.

4 Q. When you went back to the South in 2013,
5 do you recall if you heard anything -- or maybe you
6 heard about it before -- I don't want to put words
7 into your mouth. Did you hear anything about
8 paperwork in reference to Javier Molina?

9 A. I did.

10 Q. And what was your understanding --

11 MS. DUNCAN: Your Honor, I'm going to
12 object. This calls for hearsay.

13 THE COURT: I think you're going to have
14 to tie it down a little bit better than just say
15 "heard." So do you want to lay some foundation
16 before I hear this?

17 MS. ARMIJO: Certainly, Your Honor. Let
18 me ask a few other questions first.

19 THE COURT: Don't state what you've heard
20 until I've decided that. Okay?

21 THE WITNESS: Okay.

22 THE COURT: Just answer her question.

23 THE WITNESS: All right.

24 BY Ms. Armijo:

25 Q. And again, at this point, I don't want you

1 to say what you heard, but if you could just answer
2 a couple of these questions.

3 A. Okay.

4 Q. Did you hear information about Javier
5 Molina and paperwork?

6 A. I did.

7 Q. Okay. Based upon what you heard, did you
8 have a conversation with other SNM members about the
9 paperwork and what should be done about it?

10 A. I did.

11 Q. And was that conversation that you had at
12 the time -- were you a leader still in SNM?

13 A. Yes, ma'am.

14 Q. And was that conversation in reference as
15 to what should be done with the paperwork?

16 A. Yes, ma'am, it was.

17 Q. And did that conversation involve people
18 such as -- and this is just yes or no -- did that
19 conversation involve Lupe Urquizo, if you recall?

20 A. Yes, ma'am, it did. It involved --

21 Q. Okay. Tell me the people that involved,
22 without telling me the conversation.

23 A. It involved Lupe Urquizo. They call him
24 Marijuano, and Mario Rodriguez, Blue; and Archie
25 Varela. They call him Pumba.

1 Q. And the conversation that you had -- was
2 there a discussion about the paperwork and what
3 should be done, or about the paperwork?

4 A. We had discussed -- I mean, because the
5 rumor --

6 Q. I don't want to get into what the rumor
7 was.

8 A. Okay. Well, the discussion was that if
9 either one of -- any of us four ended up in Las
10 Cruces, we were supposed to take care of that.

11 Q. Okay.

12 A. In other words, we were supposed to take
13 care of business and take him out.

14 Q. Okay. And when was this conversation?

15 A. In 2013, when we were at the South.

16 Q. Okay. And do you know -- did you know
17 where the paperwork was at that time?

18 A. I didn't.

19 Q. Did you know if anybody was going to the
20 South -- Southern. I'm sorry. You were at the
21 South. Was there anyone going to Southern?

22 A. After we had that conversation, Mario
23 Rodriguez ended up going to -- coming to Southern
24 first.

25 Q. Okay. And then do you know, eventually,

1 whether or not Mauricio Varela or Lupe Urquizo went
2 down south?

3 A. I think it was after -- if I'm correct,
4 and I remember correctly, Blue left -- came to
5 Southern right before the holidays of 2013. It was
6 around that year. And then right after the holidays
7 is when Mauricio Varela and Lupe Urquizo -- they
8 both came down to Southern together.

9 Q. All right. And had you known about -- and
10 when you're saying "take care of it," what are you
11 referring to?

12 A. Taking care of business. In other words,
13 taking him out.

14 Q. Taking him out, meaning killing him?

15 A. Killing him.

16 Q. Okay. And so was there a hit out on
17 Javier Molina, as far as you knew?

18 A. Yeah. Yes, ma'am.

19 Q. And do you know -- since you had this
20 conversation about, you know, it being acted on, do
21 you know how long that hit had been outstanding?

22 A. It actually -- it had been out there at
23 least a year prior to his murder taking place.

24 Q. All right. Now, were you at the south
25 when Javier Molina was killed?

1 A. I was.

2 Q. And what happened when Javier Molina was
3 killed? Anything about your housing situation?

4 A. I got sent back to the North facility. I
5 was on my way to Southern, I was on my way down here
6 at that time. I was just waiting to see the
7 committee. But when that took place, Gregg
8 Marcantel locked us all up back at the North
9 facility.

10 Q. Okay. And just so that we're clear,
11 you're talking about -- and the jurors have heard
12 there is the North, the South, and then Southern.
13 Is it fair to say that North is Level 6, and
14 Southern Level 5 at that time?

15 A. Yes, ma'am.

16 Q. And then Southern being Level 4?

17 A. Southern was Level 4, for us.

18 Q. So would you then start -- if you were at
19 Level 6, as an SNM Gang member, was it your hopes to
20 eventually make your way down to Level 4 at
21 Southern, to have more privileges?

22 A. Yes, ma'am.

23 Q. And were there a lot of SNM members being
24 housed at the time, in 2014, at Southern?

25 A. We had one housing unit. They had one

1 housing unit that was specially -- I guess you could
2 say specially made for us. We were separated from
3 the rest of the population. We had our own little
4 yard. In other words, we couldn't mix with anyone,
5 with the rest of the general prison population.

6 Q. Now, you went back up then, after the
7 Javier Molina murder, to the North lockup?

8 A. Yes, ma'am.

9 Q. And how long did you stay locked up?

10 A. I'm -- I was going to say I'm still locked
11 up today, but --

12 Q. I should say up North.

13 A. I would say over a year.

14 Q. And how did you feel about that?

15 A. I mean, I kind of figured after that
16 incident happened, maybe we'd be locked down three
17 months, six months. But once it went into a year, I
18 mean, at that time --

19 Q. Were you happy about it?

20 A. No, I wasn't.

21 Q. Now, you mentioned Gregg Marcantel locked
22 you down. Who was Gregg Marcantel?

23 A. He was Secretary of Corrections.

24 Q. And at some point in time, in -- so that's
25 2014, you're locked down for over a year, so now

1 we're into 2015. Were you still a leader?

2 A. I was.

3 Q. And do you know somebody by the name of
4 Roy Martinez?

5 A. Yes, ma'am, I do.

6 Q. What is his nickname?

7 A. They call him Shadow.

8 Q. Was he in the gang?

9 A. Yes, ma'am, he was.

10 Q. Was he a leader?

11 A. He was.

12 Q. So we're now into 2015. Did you decide to
13 do something about the situation?

14 A. Yes, ma'am, we did. I mean, because at
15 that time, after Gregg Marcantel locked us up, he
16 had shipped Dan Dan, Pup, and Archie Varela out of
17 state. And so around that time, I mean, we were mad
18 that he had kept us locked up at that time. So at
19 that time we told ourselves, you know, Fuck him; he
20 wants to exert his authority, let's exert ours.

21 Q. What do you mean by exert your authority?

22 A. We put a hit on him.

23 Q. When you say "put a hit on him," what do
24 you mean?

25 A. Wanted to have him killed.

1 Q. And who is "he"?

2 A. Mr. Gregg Marcantel, Secretary of
3 Corrections.

4 Q. So what did you decide to do?

5 A. I wrote a couple letters to a couple
6 brothers on the streets. I didn't know -- at that
7 time I wasn't writing to very many people, I wasn't
8 talking -- I wasn't using the phone at all, and I
9 didn't know too many people on the streets. I knew
10 a couple of brothers on the streets. And the ones
11 that I did know out there, I decided I would write
12 them a letter and tell them it was time for them to
13 step up.

14 Q. All right.

15 MS. DUNCAN: Your Honor, can we approach
16 for a minute?

17 THE COURT: You may.

18 (The following proceedings were held at
19 the bench.)

20 MS. DUNCAN: Your Honor, I think you've
21 ruled on this, but I would like to preserve our
22 objections to this being hearsay.

23 THE COURT: You'll have to remind me what
24 these are.

25 MS. DUNCAN: These are the letters that

1 Mr. Martinez wrote to alleged SNM members on the
2 street regarding the hit on Gregg Marcantel.

3 THE COURT: Government's Exhibits.
4 Anybody else have anything they want to say on this?
5 Government's Exhibits 277 and 276 will be admitted
6 into evidence.

7 MS. DUNCAN: I'm sorry. Just a moment.

8 MR. LOWRY: Pardon me, Your Honor. No,
9 these letters were written in response to Eric
10 Duran's solicitation of the --

11 THE COURT: I know that's your argument
12 and stuff. But I'll let the jury make that one out.

13 MS. DUNCAN: I don't want to keep
14 interrupting. Can I have a standing objection to
15 the co-conspirator statements, given that we did not
16 get them?

17 THE COURT: All right.

18 (The following proceedings were held in
19 open court.)

20 THE COURT: All right, Ms. Armijo.

21 MS. ARMIJO: All right. I move for the
22 admission of 276 and 277.

23 THE COURT: They are admitted into
24 evidence.

25 (Government Exhibit 276 and 277 admitted.)

1 BY MS. ARMIJO:

2 Q. Mr. Martinez, you indicated that you
3 decided to write letters?

4 A. Yes, ma'am.

5 Q. How did that come about?

6 A. You mean how did the topic come up?

7 Q. Well, no. How did you decide that you
8 wanted to send letters out to people on the street
9 to move on this hit? Is that something that you
10 came up with yourself, or --

11 A. Not by myself. I mean, Roy Martinez, Eric
12 Duran -- I mean, we were all neighbors. And the
13 whole idea came about is -- that there had been a
14 hit put on Dwayne Santistevan.

15 Q. And who is Dwayne Santistevan?

16 A. At that time he was head of STIU.

17 Q. And what hit had been put out on him?

18 A. What hit had been put on him?

19 Q. Yes. You said that there had a hit out on
20 him.

21 A. Yeah.

22 Q. Tell us about that.

23 A. That there had been a hit on him for
24 making comments about Anthony Ray Baca; that he had
25 made comments that he couldn't sleep well at night

1 knowing he was walking the line. And that's when
2 Pup had put a hit on him.

3 Q. Okay.

4 A. So we would talk about that. And that's
5 when Gregg Marcantel's name came up. And then
6 that's when we decided, Well, might as well just
7 throw him in there, too. So --

8 Q. All right. Now, did you know about the
9 hit on Dwayne Santistevan prior to your writing
10 these letters and including Gregg Marcantel in on
11 the hit?

12 A. I did.

13 Q. And how long had the hit on Dwayne
14 Santistevan been outstanding?

15 A. That I don't know.

16 Q. Was it before you wrote these letters and
17 had conversations with Eric Duran and Roy Martinez?

18 A. It was.

19 Q. And is it something that you knew about?

20 A. I did.

21 Q. And you indicated that Ray Baca put that
22 hit out?

23 A. Yes.

24 Q. And I'm first going to go to Exhibit
25 Number 276. And if we enlarge that, okay, does that

1 look like your writing?

2 A. It is.

3 Q. Did you write this?

4 A. I did.

5 Q. All right. And who is Ruben?

6 A. His name is Ruben Rojos. They call him
7 Gemini. He's a carnal. He's a brother, as well.

8 Q. And was he out on the street?

9 A. He was.

10 Q. Was your plan to get this letter out to
11 Ruben on the street?

12 A. It was.

13 Q. And when was this written, if you can
14 recall?

15 A. It was -- when was it? I would say like
16 early 2015.

17 Q. So this says, "Ruben" -- and if I'm
18 misreading this, tell me, okay?

19 A. Okay.

20 Q. "Ruben, I'm going to make this simple. We
21 the big homies got together and decided that it's
22 time for you vatos who constantly get out." Is that
23 what that says?

24 A. Yes, ma'am.

25 Q. And "vatos" means what?

1 A. Brothers.

2 Q. Okay. "And come back expecting to be
3 welcomed with open arms to step up and show your
4 loyalty to the family. These days are done."

5 A. Those days.

6 Q. "Those days are done. We're tired of" --

7 A. Would you like me to read it?

8 Q. Sure. Go ahead.

9 A. "We're tired of seeing you vatos get out
10 and do nothing for the onda. We've come together
11 and decided that it's time for us to send a message
12 to these fools, and it's your responsibility to" --

13 Q. Hold on. She's going to make that bigger
14 again. I wasn't sure if you could see it very well.

15 A. Okay. "Tired of seeing you vatos get out
16 and do nothing for the onda. We've come together
17 and decided that it's time for us to send a message
18 to these fools and it's your responsibility to
19 deliver it. We want Gregg Marcantel, Secretary of
20 Corrections, and Dwayne Santistevan to be taken out.
21 The details you can figure out on your own. But
22 know this: If you decide to ignore this order or
23 fail to even make an attempt, we do have a number of
24 brothers who have been directed to reach out to you.
25 And if for some reason or another they can't get

1 ahold of you, they've been instructed to reach out
2 to your other family members. We're counting on
3 you, so don't let us down."

4 Q. Okay. And you indicate here that if
5 you -- they'll "reach out to your family members,"
6 what did you mean by that?

7 A. In other words, if they can't get ahold of
8 you, they're to hit your mom, your dad, your
9 brother, your sister, your son, your daughter,
10 anybody, any family member.

11 Q. All right. So you meant business by
12 writing this.

13 A. Yes, ma'am.

14 Q. Now, I'm going to show you Exhibit Number
15 277. All right. And this one is to a person by the
16 name of Sammy. Do you know who Sammy is?

17 A. Sammy Griego, yes, I do. He's a carnal,
18 as well.

19 Q. Was he out on the streets in early 2015?

20 A. He was.

21 Q. All right. And what did you say to Sammy?

22 A. "Sammy, straight and to the point. We the
23 big homies got together and decided that we were
24 going to give you one opportunity to make things
25 right with us and the rest of the familia. We've

1 decided that Gregg Marcantel, Secretary of
2 Corrections, and Dwayne Santistevan need to be taken
3 out, and it's your responsibility to step up and get
4 this done. It's time you show your loyalty to the
5 family. The details and everything you can work
6 out. Know this: If you should fail to step up and
7 take care of this, we do have a number of brothers
8 who have been instructed to reach out to you. And
9 if they can't get ahold of you, then they've been
10 instructed to reach out to your other family
11 members. So don't let us down. We know that you
12 are probably in contact with Grandma. The same
13 thing goes for him. He needs to step up and assist
14 you in this matter. We're on."

15 Q. Okay. Now, I wanted to ask you about a
16 couple of things. You say, "We the big homies."
17 Who are you referring to?

18 A. Talking about me and Roy.

19 Q. Okay. Is "big homies" the term for
20 leaders or --

21 A. Yeah, shot-callers.

22 Q. Okay. Then you say, "We're going to give
23 you an opportunity to make things right with us."
24 What did you mean?

25 A. He had some problems with a few brothers

1 throughout the years, and he's bumped heads with a
2 lot of brothers. And I was willing to back his
3 play, if he was willing to complete this.

4 Q. So you're giving him a chance to redeem
5 himself, so to speak?

6 A. Yes, ma'am.

7 Q. Then you say the same kind of things
8 about, If you don't do this, we know where your
9 family lives; is that right?

10 A. Brothers have been instructed to reach out
11 to other family members.

12 Q. Okay. And what did you mean by that?

13 A. Same thing. If they can't get ahold of
14 him, reach out to mom, dad, brother, sisters, any
15 other family member.

16 Q. And you write in here, "We know that
17 you're probably in contact with Grandma." Who is
18 Grandma?

19 A. Gerald Archuleta, Styx.

20 Q. Does he also have the nickname "Grandma"?

21 A. I know him as Grandma.

22 Q. Okay. Is he also called Styx?

23 A. Yes. The majority of brothers -- well,
24 the majority of the prison population knows him as
25 Styx. But --

1 Q. Why do you know him as Grandma?

2 A. Because his grandmother, I gave him the
3 nickname Grandma, because his grandmother used to
4 come and visit him at the Main.

5 Q. So you personally started calling him
6 Grandma?

7 A. Yes, ma'am.

8 Q. Did others know that nickname, as well,
9 within the SNM?

10 A. A few that he was closer to.

11 Q. Okay. And so you write both of these
12 letters to be sent out?

13 A. Yes, ma'am.

14 Q. And who do you give them to?

15 A. Eric Duran.

16 Q. And when you gave them to Eric Duran, what
17 was your expectation?

18 A. He told us he could -- I mean, my first
19 thought was, Well, how are we going to get 'em out?
20 And he said he would send them out through legal
21 mail, because they're not allowed to open our legal
22 mail or look at our legal mail. So I gave it to
23 him.

24 Q. And was it your intent, when you sent
25 these out, for these to end up going out on the

1 streets, for this to be carried out?

2 A. Yes, ma'am.

3 Q. Now, and this was early 2015?

4 A. Yes, ma'am.

5 Q. And was that what you wanted done? You
6 wanted Dwayne Santistevan and Gregg Marcantel
7 killed?

8 A. Yes, ma'am.

9 Q. Now, at some point in 2015, did something
10 happen where you went and decided -- you changed
11 your mind as far as your own life?

12 A. That's correct.

13 Q. Okay. Tell us about that.

14 A. I just got tired. I just got tired. I've
15 been doing this shit for over 30 years. And like I
16 said, off and on throughout the years. The family
17 has changed. The onda has changed. I mean, when I
18 first came in, we were all close. I'm talking when
19 Jerry Romero, a bunch of old-timers. When I was a
20 youngster, the onda was -- had a lot of respect
21 throughout the prison system and prison population
22 and among the brothers. You didn't have any inner
23 fighting with brothers. We were a family. If one
24 of us needed help, the other was there to help you.
25 Q. And did --

1 A. And off and on throughout the years that
2 changed, and it got to the point where you could be
3 talking to one brother face-to-face, the way I'm
4 looking at you now, and then as soon as you turn
5 your back, I'm talking to this other brother and
6 we're talking about killing you. And that's how it
7 was. The last few years that I was in this family,
8 that's how it was.

9 And when I renounced, I had struggled back
10 and forth, wavered back and forth, should I or
11 shouldn't I? Should I or shouldn't I? Because this
12 is all I've known. This is my whole life. Prison
13 has been my whole life.

14 Q. So you said you renounced?

15 A. I renounced.

16 Q. When did you renounce?

17 A. In May 2015.

18 Q. What did you do?

19 A. I just came in from the yard. And I told
20 the CO, "Tell Wendy Perez" -- she's our unit manager
21 at the North. I told the CO, "Tell Wendy Perez I
22 want to talk to her."

23 And when they pulled me into her office,
24 the Deputy Warden happened to be in there at that
25 time. I just walked in and I told her, "I'm done."

1 I told her, "I'm done. I want out."

2 Q. Did you give her anything?

3 A. Gave her a shank. I had a shank
4 keistered, and I gave it to her.

5 Q. So one day in May -- did you say what date
6 it was? May 2015?

7 A. May 2015.

8 Q. Okay. You indicated you wanted to talk to
9 Wendy Perez. Did she work with Corrections?

10 A. She did. She was the unit manager.

11 Q. Okay. And was she also a caseworker?
12 Does that sound right? Unit manager, caseworker?

13 A. She's unit manager. She oversees -- we
14 have a case worker and we have a unit manager. She
15 more or less oversees what the caseworker does.
16 She's the one that refers you for release from the
17 North, and that's -- she's more like the Main boss.

18 Q. Did you feel comfortable going to her and
19 renouncing to her?

20 A. I did.

21 Q. And you said that you went into her
22 office, and you gave her your shank?

23 A. Not right away. I mean, when I first went
24 in, like I said, I told her -- I looked at her, and
25 I told her, "I'm done. I'm tired of this and I want

1 out." I looked at her, and I told her, "You know,
2 there is no ulterior motives here. I'm tired. I
3 want out."

4 Q. And what happened then?

5 A. There was a lieutenant in there with the
6 Deputy Warden. And the lieutenant tells me, "Well,
7 if you're going to do this, there are steps you're
8 going to have to take."

9 And told him, "What are you talking
10 about?"

11 He asked me right straight out, he says,
12 "Where's the piece?" Because they knew I had a
13 shank, but they couldn't find it.

14 Q. Okay.

15 A. He asked me, he said, "Where's the piece?
16 I told him, "It's in me."

17 And he says, "Well, we're going to need
18 that." And I gave it to him.

19 Q. And then did you have to subsequently talk
20 to STIU?

21 A. I did.

22 Q. And did you, in fact, do that?

23 A. I did.

24 Q. And after that, were you subsequently
25 moved?

1 A. They moved me from 3A to the other side of
2 the facility, in 1A, where I was around nobody that
3 I knew.

4 Q. And what was your -- you said that you
5 were tired. Were there any other outside forces
6 that made you do that? Meaning did anybody tell you
7 you should do this? Did any law enforcement come up
8 to you and say, you know, you should cooperate? Or
9 was that something you did all on your own?

10 A. No, ma'am. Like I say, I had been
11 struggling weeks prior to that. I had been wavering
12 back forth: Should I? Shouldn't I? Should I?
13 Shouldn't I? And then I says, "You know what? Fuck
14 it. I'm out." And I did it myself.

15 Q. Now, while you were in with the SNM, I
16 guess given that you wanted out, did you know that
17 there might be consequences for your doing that?

18 A. I knew that right away, that given the
19 opportunity, that they would move on me.

20 Q. So at some point in time, were you
21 eventually contacted by the FBI that summer of 2015
22 or that fall?

23 A. I was. I mean -- well, see, when I was
24 moved, I was on disciplinary.

25 Q. Okay.

1 A. So I had to finish the two weeks'
2 disciplinary. And see, at that time the deputy
3 director of adult prisons had came to talk to me.

4 Q. And who was that?

5 A. His name is Anthony Romero. He pulled me
6 into the office, and tells me, "I just came to see
7 if what I'm hearing is true."

8 And I told him, "Yeah, it's true. I'm
9 out. I'm tired."

10 And he was going to send me out of state.
11 He was going to send me out of state.

12 So when I went back, I think it was, like,
13 about a week later, that Wendy Perez came to me and
14 had me sign paperwork to put me back on Level 6, to
15 start my process of trying to send me out of state.
16 And when she leaves the office, she tells me, "Well,
17 STIU wants to talk to you."

18 So they came into the office. And the
19 first thing they told me is, "They're coming for
20 you."

21 I told them, "What are you talking about?"

22 "The FBI, they're coming for you. No
23 matter what you do, they're coming for you." He
24 says, "Do you want to talk to them?"

25 And I kind of mentioned -- because there

1 are other members, other brothers who had renounced,
2 I mentioned to him, "Why didn't you approach
3 Benjamin Clark, or why didn't you approach Tommy
4 Valdez?"

5 He goes because, "Because you're
6 historical," because I've been in it for such a long
7 time. "Yes or no, do you want to talk to them?"

8 And I said, "Yes."

9 Q. And so then was that -- and then after
10 that, did you eventually talk with the FBI?

11 A. I did.

12 Q. Now, were you eventually indicted in this
13 case?

14 A. I was.

15 Q. Were you indicted also in a separate case
16 with Mario Rodriguez for the Alex Sosoya incident?

17 A. I was for that one and a VICAR charge.

18 Q. Okay. VICAR being Violent Crime in Aid of
19 Racketeering?

20 A. Yes, ma'am.

21 Q. Now, I'm going to show you Exhibit Number
22 686 and 687, which I'm going to move to admit, Your
23 Honor, without opposition.

24 THE COURT: Any defendant have an
25 objection?

1 Not hearing any objection, Government's
2 Exhibit 686 and 687 will be admitted into evidence.

3 (Government Exhibit 686 and 687 admitted.)

4 BY MS. ARMIJO:

5 Q. And if we could first go to 686, Mr.
6 Martinez.

7 A. Yes, ma'am.

8 Q. We're looking -- do you recognize this
9 document? And if you can't see it, we're going to
10 blow up here the first part of it.

11 A. That's my plea agreement.

12 Q. And does it have the two case numbers on
13 top for the two different cases that you were
14 facing?

15 A. Yes, ma'am.

16 Q. Then I'm going to go to the second page.
17 All right. And does that indicate that in one case
18 you were pleading guilty to Counts 9 and 10, which
19 were violent crimes in aid of racketeering for the
20 conspiracy to murder, and that would be in reference
21 to Gregg Marcantel and Dwayne Santistevan?

22 A. Yes, ma'am.

23 Q. And then in the other case, did you plead
24 guilty to conspiracy to murder and assault resulting
25 in serious bodily injury and assault with a

1 dangerous weapon?

2 A. I did.

3 Q. And is that the crimes that you committed
4 with Mario Rodriguez on Alex Sosoya?

5 A. Yes, ma'am.

6 Q. Let me ask you, did you also sign an
7 addendum? If we can go to 687, did you also sign an
8 addendum that indicates that should you testify
9 truthfully, that the United States may move for a
10 reduction in your sentence?

11 A. Yes, ma'am.

12 Q. All right. And is there any agreement
13 that you have with the United States as to what your
14 sentence should be?

15 A. No, ma'am.

16 Q. Given the amount of -- and your state time
17 that you have, I believe we indicated it's a little
18 bit over 30 years still before you're
19 parole-eligible, possibly?

20 A. My state time will exceed my federal time.

21 Q. So I guess you really don't want the
22 United States, then, to try and reduce your time
23 if --

24 A. I mean, I can still get out, but I'll be
25 in my late 80s, I mean, what, another 30-something

1 years.

2 Q. And have you been signed up as an FBI
3 confidential human source?

4 A. I have.

5 Q. And as part of that, do they give you
6 money on your books quarterly?

7 A. They do.

8 Q. And did you receive your tablet?

9 A. I did.

10 Q. You still have your tablet?

11 A. I do.

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1 Q. Did you partake in any of the activities
2 which would enable you to use the internet?

3 A. No, ma'am.

4 Q. Your tablet -- you can still look at the
5 discovery and you still have access to it?

6 A. Yes, ma'am.

7 MS. ARMIJO: If I may just have a moment,
8 Your Honor.

9 THE COURT: You may.

10 MS. ARMIJO: No further questions.

11 THE COURT: Thank you, Ms. Armijo.

12 Ms. Duncan, do you have cross-examination
13 of Mr. Martinez?

14 MS. DUNCAN: I do, Your Honor.

15 THE COURT: Ms. Duncan.

16 CROSS-EXAMINATION

17 BY MS. DUNCAN:

18 Q. Good afternoon, Mr. Martinez.

19 A. Good afternoon.

20 Q. You testified on direct that Mr. Baca put
21 a hit on Dwayne Santistevan; correct?

22 A. Yes, ma'am.

23 Q. And that that hit existed before the hit
24 on Gregg Marcantel?

25 A. Yes, ma'am.

1 Q. You learned about this alleged hit on
2 Dwayne Santistevan from Eric Duran; correct?

3 A. Yes, ma'am, that's true.

4 Q. You did not hear about it from Anthony
5 Baca?

6 A. No, ma'am, I did not.

7 Q. And Eric Duran first told you about this
8 alleged hit in 2015; correct?

9 A. That's correct.

10 Q. Around the time that he was talking to you
11 about bringing the SNM back to its former glory;
12 correct?

13 A. I don't think he used the words "former
14 glory," but I know he told me about the hit on
15 Dwayne Santistevan.

16 Q. Sort of establishing the presence of the
17 onda is one of his purposes; correct?

18 A. He never said that to me.

19 Q. And Eric Duran is the one who told you
20 about this alleged comment Mr. Santistevan had made
21 about he couldn't sleep at night because of Mr.
22 Baca. Correct?

23 A. That's true.

24 Q. So is it fair to say that everything you
25 know about this alleged hit Mr. Baca put on Dwayne

1 Santistevan came from Eric Duran?

2 A. That's true.

3 Q. I would like to go back a little bit to
4 your testimony about when you first got into PNM
5 back, I think you said, 1983.

6 A. Yes, ma'am.

7 Q. And how old were you at that time?

8 A. I was 18.

9 Q. And that was -- 1983 was just a few years
10 after the prison riots; correct?

11 A. That's correct.

12 Q. And the PNM Main was still a pretty
13 dangerous place, wasn't it?

14 A. I didn't -- I started my time in '83 here
15 in Southern. I came to Southern first. I did 1984,
16 1985 here in Southern. Then I went to the North
17 facility. I mean, then I got sent to Santa Fe. I
18 had to go to the North facility to do a month first,
19 then I went to the line.

20 Q. And when you got -- so when you went to
21 the line, would you say that PNM main was a somewhat
22 dangerous place?

23 A. I would say that.

24 Q. And there were other inmates there who
25 took you under their wing; correct?

1 A. Well, I mean, I wouldn't say they -- well,
2 give me schooling. I guess you could say that, that
3 they schooled me.

4 Q. And looked out for you a little bit?

5 A. In a way, yeah.

6 Q. Was one of those people known as Old Dan
7 Dan?

8 A. That's true.

9 Q. Do you know Old Dan Dan's real name?

10 A. Daniel Sanchez.

11 Q. And did he have a nickname for you, Old
12 Dan Dan?

13 A. I don't ever remember him giving me a
14 nickname.

15 Q. Do you remember him calling you chavalon?

16 A. I was never his chavalon.

17 Q. How about Pat Esquibel?

18 A. His name is Pate Esquibel. I know him,
19 too. He's another old-timer.

20 Q. Is he someone who took you under their
21 wing, looked out for you?

22 A. When I hit the Main facility, I was like
23 21; 20, 21 years old. And I ran with the older
24 convicts, and Dan Dan, Daniel Sanchez, and Pate
25 Esquibel were two of them. They schooled me.

1 Q. And we're talking the old Dan Dan, not
2 this Mr. Sanchez?

3 A. That's true.

4 Q. And in those early days, would you agree
5 that people within the SNM looked out for each
6 other?

7 A. That's true.

8 Q. And to be vulnerable in prison was
9 dangerous; correct?

10 A. Predator or prey. That's what prison life
11 is about. You're either going to be the predator or
12 you're going to be the prey.

13 Q. And if you have a family or friends with
14 you, then you're more safe than if you walk alone;
15 correct?

16 A. I would say that's true.

17 Q. And you also talked about disrespect as an
18 SNM member, and that it could be a problem, that you
19 had to stand up for yourself so you wouldn't seem
20 weak. Do you remember that?

21 A. That's true.

22 Q. Isn't that true for all inmates, that
23 being seen as weak puts you in danger?

24 A. I would say that's true, too.

25 Q. I'd like to go back to the alleged hit on

1 Dwayne Santistevan and Gregg Marcantel. Now, at the
2 time that you were having this discussion with Eric
3 Duran and Roy Martinez, your primary goal was to go
4 out of state; correct?

5 A. I wanted to go out of state, yes.

6 Q. And you had sent a letter out that was
7 intercepted by STIU; correct?

8 A. I don't know what letter you're talking
9 about.

10 Q. You had this idea about hitting Gregg
11 Marcantel, and you wanted the administration to find
12 out about it because they would ship you out of
13 state.

14 A. That wasn't the letter.

15 I mean, they moved us from unit -- Housing
16 Unit 3A to 3B, in, like -- right after the holidays,
17 2014, early 2015, they moved us from Housing Unit 3A
18 to 3B.

19 And at that time, STIU was pulling us into
20 Wendy Perez' office at that time, I guess to see how
21 we were or see where our frame of mind was at. And
22 as I was leaving the office -- because at that time
23 I did want to go out of state. I mean, they were
24 keeping us locked down for a year or two. I wanted
25 to go out of state. And when I was in the office,

1 when I was getting ready to leave the office, I
2 leaned over, as I was getting ready to leave, I told
3 them, "I was going to say something, but never
4 mind."

5 But STIU Myers said, "Go ahead and say
6 it."

7 I looked at him and I told him I was going
8 to make it my mission in life to see that
9 motherfucker in a pine box.

10 And he tells me, "What motherfucker?"

11 And I told him, "Gregg Marcantel." And
12 then I left the office.

13 And my whole purpose in putting that
14 message out there was to push administration's
15 hands, to push the issue with administration so they
16 could send me out of state. And that was the whole
17 reason behind that.

18 Q. Thank for you clarifying that.

19 A. Okay.

20 Q. So that's something that you -- when you
21 were talking with Eric Duran and Roy Martinez about
22 this plot against Gregg Marcantel, you discussed
23 that conversation you had had with STIU; correct?

24 A. It was around the same time, yes, that's
25 true.

1 Q. And you and Roy kind of argued about it;
2 correct?

3 A. We did.

4 Q. Roy's whole purpose -- Roy was very
5 serious about the hit, making a hit on Gregg
6 Marcantel; correct?

7 A. Well, Roy wanted to go out of state, as
8 well. And I was just as serious about it as he was.

9 Q. Now, you said that you have the tablet in
10 this case with the discovery?

11 A. Yes.

12 Q. And that tablet contains recordings that
13 Eric Duran made of your conversations with him and
14 with Roy Martinez; correct?

15 A. That's true.

16 Q. Have you listened to those recordings?

17 A. I have.

18 Q. And those recordings -- are they true and
19 accurate representations of conversations you had
20 with Eric Duran and Roy Martinez?

21 A. I didn't listen to Roy's. I listened to
22 mine.

23 Q. Did you listen to a conversation in which
24 you were talking to Mr. Martinez and Mr. Duran about
25 wanting to go out of state?

1 A. I do. I told him to, "Shut the fuck up."
2 Because Eric Duran lived between us. And Roy
3 Martinez lived on one side of him, and I lived on
4 the other side of him. And this was when I came
5 back from the office, after throwing that comment
6 out there, and Eric Duran was living in between us
7 and we're trying -- and we're both talking to him at
8 the same time. That's when I tell Eric to tell Roy,
9 "Tell him to 'Shut the fuck up.'"

10 Q. And why were you telling Mr. Martinez to
11 shut up?

12 A. Because I was trying to say something.

13 Q. Okay. Fair enough.

14 (Laughter).

15 MS. DUNCAN: Your Honor, at this time I
16 would move admission of Defendants' Exhibit Z16.

17 THE COURT: Any objection, Ms. Armijo?

18 MS. ARMIJO: No, Your Honor.

19 THE COURT: All right. Any other
20 defendant?

21 MR. JEWKES: No, Your Honor.

22 THE COURT: Not hearing any objection,
23 Defendants' Exhibit Z16 will be admitted into
24 evidence.

25

1 (Defendants' Exhibit Z16 admitted.)

2 BY MS. DUNCAN:

3 Q. And Mr. Martinez, I will represent to you
4 this is a recording of a conversation that you had
5 with Roy Martinez and Eric Duran at PNM.

6 A. Okay.

7 Q. And can you tell us, before we play it,
8 when the three of you were talking, where were you?

9 A. We were in our cells. We were in X pod.
10 Roy lived in X2. Eric was in X3. I was in X4.

11 Q. So Eric Duran was in the middle?

12 A. Yes, ma'am.

13 Q. So when the three of you were talking,
14 would Eric Duran sort of repeat what you said to Roy
15 so he could hear it?

16 A. Sometimes, that's true.

17 Q. Was it difficult for you and Roy to hear
18 each other directly?

19 A. I couldn't hear him. He was too far away.

20 Q. And how were you communicating with Mr.
21 Duran?

22 A. We were talking underneath our bunk.

23 Q. Was that through vents?

24 A. A heater; they have a heater underneath
25 the bunk, and we would talk through that.

1 MS. DUNCAN: If we could start playing --
2 Your Honor, just a moment. Your Honor, we did have
3 the wrong -- so I would withdraw Z16, and instead,
4 move the admission of Y1.

5 THE COURT: All right. Any objection to
6 the withdrawal of Z16?

7 MS. ARMIJO: No, Your Honor.

8 MR. VILLA: Your Honor, I would just say I
9 believe Z16 was identified as a call that was played
10 for Tim Martinez. I don't object to the withdrawal.
11 Just so the record is clear, that's what that was.

12 THE COURT: Was it played?

13 MR. VILLA: It was played, Your Honor. It
14 wasn't admitted, but it was played.

15 THE COURT: So Z16 will be withdrawn.

16 (Defendants' Exhibit Z16 withdrawn.)

17 THE COURT: And what's the new exhibit,
18 Ms. Duncan?

19 MS. DUNCAN: Y1, Your Honor.

20 THE COURT: Any objection to that, Ms.
21 Armijo?

22 MS. ARMIJO: No, Your Honor.

23 THE COURT: Anybody else have an
24 objection?

25 Defendants' Exhibit Y1 will be admitted

1 into evidence.

2 (Defendants' Exhibit Y1 admitted.)

3 (Tape played.)

4 BY MS. DUNCAN:

5 Q. Who is speaking there?

6 A. That's Eric Duran.

7 Q. And when he says -- he said that you guys
8 put out the hits but the primary goal is to try to
9 keep it a secret, who is he talking about?

10 A. Are you talking about the hits?

11 Q. Well, I believe that Mr. Duran just said,
12 "He said that you guys put out the hits, but the
13 primary goal is to try to keep it a secret, and not
14 really tell them on you guys." Is he talking about
15 Roy Martinez?

16 A. He's talking about administration. He
17 doesn't want administration to get wind of it.

18 Q. And who is "he" in that? Roy Martinez
19 doesn't want the administration to get wind of it;
20 correct?

21 A. Correct.

22 Q. Thank you. Keep playing.

23 (Tape played.)

24 MS. DUNCAN: Is everyone able to hear
25 this? I can put a transcript down.

1 Q. Are you able to hear it, Mr. Martinez?

2 A. I can hear. It's kind of hard, but I can
3 hear it a little bit.

4 (Tape played.)

5 Q. Again, who is that speaking?

6 A. That's me talking.

7 (Tape played.)

8 Q. So there you said, "Hey, tell him I
9 thought his priority was to try to get shipped out."

10 A. Because at that time he and I were
11 discussing getting sent out, trying to get
12 administration to send us out of state. Because,
13 like I say, Gregg Marcantel had had us all locked up
14 for over a year, and we didn't know how long he was
15 going to keep us locked up. So we had both talked
16 about it in the yard, about trying to push the issue
17 with administration.

18 Q. And so making this threat against Mr.
19 Marcantel is a way to get yourself shipped out of
20 state?

21 A. Okay. We wanted him hit. But, yes, that
22 is a way for that to happen. But if we can
23 successfully get that done, then so be it.

24 Q. So you wanted both things?

25 A. Correct.

1 Q. Who is that last voice we heard right
2 before Eric Duran said "What is"? Is that Roy
3 Martinez?

4 A. I'd have to hear it again.

5 Q. Play it again.

6 (Tape played.)

7 A. That's my voice.

8 Q. That's your voice?

9 A. Yes, ma'am.

10 Q. That last voice, "That's the primary
11 goal" -- is that Roy Martinez?

12 A. Yes, ma'am.

13 Q. Okay. Keep going.

14 (Tape played.)

15 Q. So there you said, "I thought he wanted to
16 go out of state." Were you referring to Roy
17 Martinez?

18 A. Yes, ma'am.

19 Q. And is Roy Martinez also known as Shadow?

20 A. Yes, ma'am.

21 Q. Thank you.

22 (Tape played.)

23 Q. Right there you said, "Come on, come on,
24 you and I know damn well that's not going to
25 happen."

1 What did you mean there?

2 A. That the ones who would really step up to
3 do that -- I mean, when all that came about and we
4 were talking about it, I threw that comment out
5 there, because -- how should I word this -- within
6 our family there is -- within our family I'd say
7 there's a handful that had the balls to actually do
8 that, who would actually do that. And to me, when I
9 threw that comment out there, that's what I was
10 referring to. Because half of our brothers -- to
11 me, half of our brothers aren't worth a fuck.
12 They're weak; haven't busted a grape. And the ones
13 who would step up and be willing to do that were
14 locked up.

15 (Tape played.)

16 Q. Right. I think you said, "I hope that the
17 administration can get wind of it. That way they
18 can come and" -- is that correct?

19 A. I don't think I said that. That I hope
20 administration gets wind of it?

21 Q. We can go back.

22 A. I don't think I said that.

23 Q. So there I think you said, "What better
24 way to get shipped out of state then go in there and
25 tell them, 'Hey, look, I'm going to make this my

1 sole mission in life.'" That's what you said in the
2 meeting with STIU; correct?

3 A. That's true.

4 Q. And this wasn't the first time that you
5 had tried to use a disciplinary infraction to get
6 yourself moved from one facility to another;
7 correct?

8 A. I don't know what you're talking about.

9 Q. Was there a point when you were in
10 Southern New Mexico Correctional Facility with
11 Gerald Archuleta?

12 A. You're talking in -- off and on throughout
13 the years.

14 Q. And was there a point when you and Mr.
15 Archuleta were in Southern New Mexico Correctional
16 Facility together, and you wanted to get back to
17 PNM?

18 A. I think that was in -- that's true, I
19 think that was -- if I'm correct, I think that was
20 in '96.

21 Q. And so the two of you decided that you
22 would attack another inmate in the hope that you
23 would then be sent up to Seg, which is in PNM;
24 correct?

25 A. That's true.

1 Q. And the first inmate that you targeted --
2 there were three of you who targeted the inmate;
3 correct?

4 A. That's true.

5 Q. It was you, Mr. Archuleta, and who else?

6 A. His name was Jesse Trujillo. They called
7 him Terminator.

8 Q. And so what did you do -- so who is the
9 inmate you targeted?

10 A. I didn't know who he was. Us three were
11 walking the yard. Us three wanted to get sent back
12 to Santa Fe. We were walking the yard. And I don't
13 know who the guy was, but Jesse Trujillo said that
14 he had some kind of sex crime. So we attacked him.
15 And Jesse Trujillo was the only one that got caught
16 in that incident, and Gerald and I got away.

17 They had a softball game in the yard that
18 day, and we were picking out other victims. And
19 Gerald -- there was some white boy that Gerald had
20 bumped heads with. And I told Gerald, "Let's just
21 pick up that baseball bat and whack him across the
22 head."

23 Gerald said, "No, I don't want to kill
24 him. I just want to go back to Santa Fe."

25 So we just ended up assaulting him.

1 Q. And when that didn't work, when you and
2 Mr. Archuleta were not shipped to Santa Fe, did
3 you --

4 A. We were.

5 Q. You were later shipped to Santa Fe?

6 A. Within a day or two.

7 Q. Of that initial assault?

8 A. Yes, ma'am.

9 Q. You were housed with Mr. Baca in the
10 1990s; correct?

11 A. The last time I was housed -- I mean, the
12 last time I was in the same facility as -- last time
13 I can remember being with Pup was in -- about a year
14 before they shut the Main facility down. I had got
15 out of the North first, and he got out after me. He
16 was living in cell block 6, and I was living in cell
17 block 3.

18 That's the last time I can remember,
19 because that's when they had an incident in cell
20 block 5, where a couple of white boys moved on three
21 of our brothers. They locked the facility down.
22 The administration ended up locking all SNM down.
23 Pup got sent out of state. I got sent back to the
24 North. So the last time I can remember being in the
25 same facility or being around him is a year -- I'd

1 say '96, '97, right before they shut the Old Main
2 facility down.

3 MS. DUNCAN: May I have a moment, Your
4 Honor?

5 THE COURT: You may.

6 MS. DUNCAN: No further questions.

7 THE COURT: Thank you, Ms. Duncan.

8 Mr. Maynard, do you have cross-examination
9 of Mr. Martinez?

10 MR. MAYNARD: Yes, Your Honor.

11 THE COURT: Mr. Maynard.

12 CROSS-EXAMINATION

13 BY MR. MAYNARD:

14 Q. Mr. Martinez, I'd like to just clarify a
15 few points for the jury.

16 A. Okay.

17 Q. Going over your direct examination earlier
18 this afternoon and the cross-examination, you
19 mentioned at one point in response to a question
20 from Ms. Duncan that in the prison system you're
21 either a predator or you're prey. Do you remember
22 that?

23 A. I do.

24 Q. You do?

25 A. Yeah.

1 Q. And what do you mean by that?

2 A. I mean, in prison somebody who is weak,
3 somebody who doesn't stand up for themselves,
4 they're taken advantage of a number of different
5 ways. They can be sexually assaulted, they can have
6 their commissary taken, make them pay rent.

7 Q. Extortion?

8 A. Yeah, extortion.

9 Q. Right. Now, you also mentioned -- if I
10 heard correctly, you mentioned that half of the
11 brothers are weak. Were you referring to brothers
12 in the SNM or in a particular gang or organization?

13 A. SNM.

14 Q. SNM. So what do those half who are weak
15 do between predator and prey?

16 A. I mean, because like I was telling Ms.
17 Armijo earlier, off and on throughout the years, the
18 SNM has changed. When I first came in '88,
19 throughout the '90s, into the early 2000s, we were
20 solid. You knew who your brother was. You knew you
21 could count on him to have your back if something
22 went down.

23 Q. Well --

24 A. But throughout the years, late 2000s, late
25 2000s that changed. You didn't know who -- you

1 didn't know who your brother was.

2 Q. Well, so do you mean that, back then, all
3 the SNM members were predators? There were no prey?

4 A. What I mean -- I used the word solid. In
5 other words, you knew you can trust him, that he
6 wasn't going to go rat on you, or if something
7 happened, he wouldn't turn around and run the other
8 way.

9 Q. So it was different in the sense that
10 there was more trust?

11 A. True, true.

12 Q. But so you have a situation where instead
13 of having predator or prey, you have half the people
14 who are somewhere in between; they're weak, but they
15 may not be prey, or they may not be predators?

16 A. I mean, what are you talking? I don't
17 know what you're talking about.

18 Q. Well, I'm just trying to get clarification
19 of where those half who are weak stand. Are they
20 predators, or do they become prey?

21 A. I mean, because, look, like I said, in the
22 later years, a person could become -- a person could
23 become a brother, a carnal, just because you had a
24 family member who was in the family, or because you
25 hit -- or because you brought a lot of drugs, you

1 were automatically made a carnal.

2 And when I came in, you had to earn your
3 bones in order to become a carnal. In other words,
4 you had to spill blood in order to come in.

5 In the later years, that --

6 Q. You didn't have to earn your bones.

7 A. They didn't have to do that. They could
8 either get drugs, or because they had a family
9 member that was a carnal, they were automatically a
10 carnal.

11 Q. I understand.

12 THE COURT: Mr. Maynard, what I'm
13 proposing is we take about a 15-minute break, and
14 come back and go about a half-hour. Does that work
15 for you?

16 MR. MAYNARD: That's fine.

17 THE COURT: All right. We'll be in recess
18 about 15 minutes. All rise.

19 (The jury left the courtroom.)

20 THE COURT: All right. We'll be in recess
21 for about 15 minutes.

22 (Court stood in recess.)

23 THE COURT: All right. We'll go on the
24 record here. Anything we need to discuss before Ms.
25 Standridge brings in the jury?

1 MS. ARMIJO: No, Your Honor.

2 THE COURT: Mr. Maynard, do you have
3 anything to discuss?

4 MR. MAYNARD: Just a little cross.

5 THE COURT: All right. How about any of
6 the other defendants? Anything they need to
7 discuss?

8 MR. BECK: Your Honor, did you look over
9 Government's --

10 THE COURT: Oh, yeah, I did. Well, the
11 transcript, I think, helps you in ways that you
12 don't need help on. I think it makes it look like
13 Mr. Baca killed Mr. Velasquez because Mr. Velasquez
14 disrespected Mr. Baca. I think it also establishes
15 that he didn't act alone. But I still don't see
16 anything in here about SNM orders or SNM requiring
17 the hit.

18 Give me just a few seconds here. Let me
19 finish up and tell you my thoughts, then you can
20 argue it out a little later. It might have
21 incidentally bolstered the SNM's reputation. I'll
22 agree with you that the murder may have bolstered
23 the SNM's reputation as a powerful and violent gang.
24 But again, I think that shows the relevance of it.
25 But I don't think that it makes the murder an SNM

1 hit. And so I'm still not seeing the evidence
2 that's necessary to get you to that point and the
3 jury get to that point. It's just sticking it out
4 there and hoping they'll connect the dots, and I'm a
5 little worried about that.

6 MR. BECK: What we've got in that
7 conversation --

8 THE COURT: Let me do this: Let me let
9 you argue it out another time. But you did ask, and
10 I read it, and those are my thoughts. All rise.

11 (The jury entered the courtroom.)

12 THE COURT: All right. Mr. Martinez, I'll
13 remind you that you're still under oath.

14 Mr. Maynard, if you wish to continue your
15 cross-examination, you may do so at this time.

16 MR. MAYNARD: Thank you, Your Honor.

17 BY MR. MAYNARD:

18 Q. Just a few questions. Mr. Martinez, I
19 want to move forward a little bit, I don't know
20 exactly, around 2011, 2012, 2013. You mentioned in
21 answer to some questions a moment ago or half an
22 hour ago you were discussing Javier Molina, and you
23 were together with Mario Rodriguez and Lupe Urquizo.

24 A. Yes, sir.

25 Q. And were you discussing some paperwork or

1 rumors of paperwork?

2 A. I don't think we were discussing
3 paperwork. I mean, I think it was -- all of us
4 understood that the paperwork had been out there, or
5 the rumor that the paperwork had been out there for
6 at least a year. We were discussing that if either
7 one of us, or any of us four were to go to Southern,
8 we were supposed to take care of it.

9 Q. And by "take care of it," you mean the
10 three of you decided to order -- basically issue a
11 hit, as they call it?

12 A. Yes, sir.

13 Q. Okay. And you were up north at the time,
14 the three of you?

15 A. Yes, sir.

16 Q. And in PNM North or South?

17 A. I was at the South.

18 Q. Near Santa Fe?

19 A. Yeah.

20 Q. And at that time, Mr. Molina was in
21 Southern, down here near Las Cruces?

22 A. He was.

23 Q. So the three of you made that decision
24 sometime in 2012 or 2013, maybe -- the timing is not
25 critical -- but the three of you made that decision

1 together?

2 A. I think the hit on him was -- had been out
3 there for a year prior to it actually happening.

4 Q. Well, the three of you made the decision
5 to endorse that, if it was already out?

6 A. That's true.

7 Q. And sometime later Mario Rodriguez was
8 transferred south?

9 A. That's true.

10 MR. MAYNARD: That's all, Your Honor.

11 THE COURT: Thank you, Mr. Maynard.

12 Anyone else? Mr. Villa?

13 MR. VILLA: Yes, Your Honor, briefly.

14 THE COURT: Mr. Villa.

15 CROSS-EXAMINATION

16 BY MR. VILLA:

17 Q. Can we see Government's 586? It's already
18 been admitted.

19 Good afternoon, Mr. Martinez.

20 A. Good afternoon.

21 Q. I'm showing you Government's Exhibit 586.
22 That's Mario Rodriguez; right?

23 A. Yes, sir.

24 Q. And this is the individual that you just
25 were talking to Mr. Maynard about; you had a

1 conversation with him in 2013, along with Lupe
2 Urquizo and Mauricio Varela; correct?

3 A. That's true.

4 Q. That conversation took place in Santa Fe
5 at PNM?

6 A. PNM South, South facility.

7 Q. And the four of you agreed that whoever
8 got to the South first would take care of Javier
9 Molina?

10 A. That's true.

11 Q. Meaning kill him?

12 A. True.

13 Q. And that was based on, as you just said,
14 this discussion about a rumor that there was
15 paperwork on Mr. Molina?

16 A. That's true.

17 Q. Paperwork that he had informed to law
18 enforcement?

19 A. That -- yeah, true, that's true.

20 Q. So based on that rumor, you all came to
21 this agreement, this understanding?

22 A. Well, the rumor was that the paperwork had
23 been down there a year before; that it had been
24 given to three brothers: Benjamin Clark; they call
25 him Cyclone. BB, Javier Rubio. And they call him

1 Little Cruces -- I don't know his real name. That
2 they had got ahold of the paperwork a year prior to
3 that, but that they sat on it and nothing was ever
4 done.

5 Q. This is the rumor that you all were
6 discussing?

7 A. We didn't discuss that. But we discussed
8 that if either of us four showed up in Las Cruces,
9 that we would make sure it was taken care of.

10 Q. Got it. And Mario Rodriguez, who we're
11 seeing here on Government's 586 -- that's the same
12 Mario Rodriguez that attacked Alex Sosoya with you;
13 correct?

14 A. That's true.

15 Q. I think it was your testimony that
16 occurred, like, in 2011; right?

17 A. 2011.

18 Q. And you said you went up on the top tier,
19 because that's where you were, and went to each of
20 the other brothers up there and said, "I'll take
21 care of this. Back off."

22 And all of them said, "Okay," except Mario
23 Rodriguez?

24 A. That's true.

25 Q. Mario wanted to help?

1 A. That's true.

2 Q. He did help?

3 A. That's true.

4 Q. You told us that when you were out in the
5 yard at PNM South, that's where the attack on Sosoya
6 occurred; correct?

7 A. Yes, sir.

8 Q. Isn't it true that the plan that you and
9 Mario came up with to attack Sosoya was, you wanted
10 to wear him down on the basketball court, get him
11 tired first, then attack him?

12 A. I don't think that was our plan. I mean,
13 we were going to move on him, I mean, but we didn't
14 discuss, "Hey, let's play basketball, get him tired,
15 then we'll hit him." We didn't discuss that. We
16 discussed, "When we go to the yard, we'll move on
17 him."

18 Q. And Mario moved first?

19 A. He did.

20 Q. He went after him first?

21 A. He did.

22 Q. You guys got into this fight and it got to
23 the point that they're shooting teargas at you;
24 right?

25 A. That's true.

1 Q. I think you said you got hit in the head
2 with the gas can?

3 A. That's true.

4 Q. So that pretty much took you out of the
5 fight?

6 A. It did.

7 Q. But Mario Rodriguez kept fighting;
8 correct?

9 A. He was choking him out.

10 Q. He was choking Mr. Sosoya?

11 A. Yeah, he was choking him out. Yeah, he
12 was wrapped around him.

13 Q. I think Ms. Armijo asked you if you saw
14 Mario bite Mr. Sosoya's ear off. And you said you
15 didn't.

16 A. I didn't see that. The gas had hit me, so
17 I didn't see anything after that.

18 Q. You heard about it later?

19 A. Yeah. When the State Police showed up at
20 the hospital and asked me about it.

21 Q. Did you ever hear Mario Rodriguez bragging
22 about biting his ear off?

23 A. No.

24 Q. Now, you would agree with me that one of
25 the charges you pled guilty to in this case in your

1 plea agreement was for the assault on Mr. Sosoya?

2 A. That's true.

3 Q. Mario Rodriguez was included in that
4 indictment?

5 A. That's true.

6 Q. You had agreed to cooperate and testify
7 against Mario Rodriguez, didn't you?

8 A. That's true.

9 Q. And in fact, the trial was going to be
10 scheduled, I think, in October of last year, maybe
11 early November last year; right?

12 A. I don't know about that, but I know it was
13 supposed to take place here just recently.

14 Q. Not long ago?

15 A. Yeah, not long, about a couple months.

16 Q. And right before that trial, Mario
17 Rodriguez went to work for the Government and
18 entered a plea agreement himself; right?

19 A. That's true.

20 Q. So you didn't have to testify against him?

21 A. I didn't.

22 Q. But you were going to?

23 A. I was.

24 Q. At the time of the 2011 hit on Sosoya, you
25 were a shot-caller; right?

1 A. I was.

2 Q. Meaning if you called a shot, if you said,
3 "Hit somebody," it had to get done?

4 A. True. That's usually how it works.

5 Q. And the point, at least before Sosoya,
6 before the Sosoya assault, Mario Rodriguez -- he
7 wasn't a shot-caller yet, was he?

8 A. Mario has never been a shot-caller.

9 Q. He never ran the pod at any point in time?

10 A. He's a soldier.

11 Q. As far as you know.

12 A. He's a soldier.

13 Q. And a soldier's job is, if the shot-caller
14 tells them what to do, they do it?

15 A. True.

16 Q. Before you're a shot-caller, you start off
17 as a soldier; right?

18 A. That's usually the way it works. But in
19 my case, being a shot-caller, I wouldn't tell
20 anybody to do something I wouldn't do myself. The
21 only time I would do that is if a carnal was in a
22 position to do it and I wasn't. If I was there, I
23 would tell him, "Hey, come on, let's go," or, "Hey,
24 watch my back," or, "Hey, I want to do this by
25 myself." That's how I worked.

1 Q. If somebody like Mario Rodriguez, as a
2 soldier, wanted to work themselves up to becoming a
3 shot-caller, they'd have to put in work; right?

4 A. That's true.

5 Q. And elevate their reputation in the S?

6 A. That's true.

7 Q. You testified, I think, at the beginning
8 of your direct examination that one of the rules or
9 one of the issues y'all deal with is somebody who is
10 a sex offender; right?

11 A. I said that?

12 Q. Sex offender -- they can't be in the SNM?

13 A. Rapists or child molesters.

14 Q. Rapists or child molesters?

15 A. Rapists or child molesters.

16 Q. And I mean, that's generally true in
17 prison; right? If someone is a rapist or a child
18 molester, they can be attacked, whether it's a gang
19 or not; right?

20 A. Say that again.

21 Q. I mean, isn't that generally true in
22 prison, that folks who are rapists or child
23 molesters are in danger of being attacked?

24 A. That's usually how it works.

25 Q. Did you know that Mario Rodriguez had a

1 sex offense for a rape?

2 A. I did.

3 Q. And that would make it harder for him to
4 become a leader in the SNM, wouldn't it?

5 A. I don't know. That's kind of hard to
6 answer. I would have to say -- well, I mean,
7 because I know him, and I would consider him to be
8 one of the best soldiers we have, because he
9 wouldn't hesitate to pick up a knife and stab
10 somebody, or try to take somebody out. He wasn't
11 scared to do that.

12 And like I mentioned earlier, 90 -- I'd
13 say 75 percent of our brothers have never done that,
14 and wouldn't do that. He was one that wouldn't
15 hesitate. So I mean, if we were still in the SNM,
16 and he was continuing to put in work, and he wanted
17 to become a shot-caller, I'd back him.

18 Q. You'd back him because of what you just
19 said: He wouldn't hesitate to pick up a shank and
20 stab somebody?

21 A. Sure.

22 Q. And he was tough; right?

23 A. True.

24 Q. Wasn't afraid of violence?

25 A. True.

1 Q. And your view of him, though, might not be
2 the same as others in the SNM, because he has a sex
3 offense; right?

4 A. That might be true, too.

5 MR. VILLA: That's all the questions I
6 have, Judge.

7 THE COURT: Thank you, Mr. Villa.

8 Ms. Jacks? Mr. Jewkes?

9 MR. JEWKES: We have no questions.

10 THE COURT: Ms. Armijo, do you have
11 redirect of Mr. Martinez?

12 REDIRECT EXAMINATION

13 BY MS. ARMIJO:

14 Q. Just for clarification, you talked about
15 an old Dan Dan. That is a different person from the
16 Dan Dan that you referred to in court today?

17 A. Yes, ma'am.

18 Q. And when you were talking -- let's see,
19 Eric Duran -- Ms. Duncan was talking to you about
20 Eric Duran, and even played a phone call -- not a
21 phone call, a recording -- between you and Shadow,
22 Roy Martinez, and Eric Duran. When that recording
23 was made, were you aware that you were being
24 recorded?

25 A. I didn't.

1 Q. Were you aware that Eric Duran was working
2 with law enforcement?

3 A. I didn't. Had I have known that, I would
4 have tried to kill him.

5 Q. Was Eric Duran a leader in the SNM?

6 A. No.

7 Q. What was his position, if any?

8 A. He got dope. That's all he ever did.

9 Q. Was get dope?

10 A. Yeah.

11 Q. You talked a little bit about different
12 people -- I guess times changing, people used to
13 always have to earn their bones; is that right?

14 A. Yeah.

15 Q. And then you talked about how there are
16 some SNM members who just got a lot of drugs. Is
17 that true?

18 A. True. I mean, like I said, 99.9 percent
19 of us are all dope fiends, and just because somebody
20 hit a clavo, brought drugs in through the visits, we
21 would make them a carnal.

22 Q. Chris Garcia -- is he an SNM member?

23 A. He is.

24 Q. And what was his value to SNM?

25 A. Dope.

1 Q. Now, you talk a lot about old school, so
2 to speak. And we talked about how many years, and
3 you've seen a change in the SNM. Is it fair to say
4 that you're kind of one of the older generations
5 that's around now of the SNM?

6 A. That's true.

7 Q. And it's kind of hard to -- maybe
8 sometimes older generations don't like what new
9 generations are doing with things?

10 A. Yeah, that's true.

11 Q. Would predator and prey -- was SNM -- were
12 they predators or prey?

13 A. Okay. See, the way I interpreted that
14 question when he presented it to me was, is that we
15 ran around bulldogging everybody, taking shit from
16 everybody, taking everybody's dope. And that wasn't
17 necessarily true. You know, that wasn't
18 necessarily -- I mean, I didn't do that. I never
19 did that. And I know a lot of my older brothers
20 never did that.

21 I mean, predator and prey. Within prison
22 life, you can't be seen as weak, I mean, because if
23 you're seen as weak, you're going to be taken
24 advantage of. And there's number of different ways
25 a person can take advantage of you, you know what I

1 mean, hundreds of different ways, you know.

2 Q. Now, you talked about how -- you said, you
3 know, a large percentage are dope fiends. Were you
4 ever one of those that was really involved heavily
5 in the drug --

6 A. Yes, I was. I've sold -- I mean, I used
7 to have my wife, who I was married to back in the
8 '90s, I used to have my wife bring me in dope. And
9 I was supporting her from inside. I mean --

10 Q. How did you meet your wife?

11 A. Through Anthony Ray Baca's wife.

12 Q. Okay. Was this a jailhouse romance sort
13 of thing?

14 A. It was.

15 Q. And so Anthony Ray Baca's wife introduced
16 you to a woman that you married while you were
17 incarcerated?

18 A. Yes, ma'am.

19 Q. And what would she do?

20 A. She'd bring me in dope. I mean, it
21 started at the South -- it started in the North,
22 where she would come and visit me three times a
23 week. And at that time she was selling her food
24 stamps and ABT cards to buy me -- we called them
25 medios, street papers of heroin. And it went from

1 street papers of heroin to grams of heroin, quarter
2 ounces of heroin.

3 Q. And was that -- did you at some point
4 divorce her, or did that relationship end?

5 A. After about a year. She got strung out.

6 Q. Now, you mentioned the term "busted a
7 grape"?

8 A. Yes.

9 Q. What does that mean?

10 A. Earning your bones. I mean, it's another
11 word for, like -- it's like a brother who never did
12 anything. I mean, I know brothers who have been in
13 the onda for years, for years, years, years. Can I
14 use an example?

15 Q. Sure.

16 A. Let's talk about Jerry -- they call him
17 Plaz.

18 Q. Montoya?

19 A. Montoya. Jerry Montoya. I mean, before
20 he committed that murder with Javier Molina, he did,
21 like, 13, 14, 15 years before -- that's the first
22 thing I've ever known him to do.

23 Q. So that would be an instance where
24 somebody had to earn their bones?

25 A. Yeah. I mean, although he was a carnal

1 for all them years -- and I mean, he got dope here
2 and there, but --

3 Q. And you talked about how there are some
4 weak members, so to speak. Would a weak SNM member
5 be appointed a leader of a pod at the different
6 facilities, or in order to be a leader of a pod,
7 would you be strong?

8 A. Not necessarily. Because there have been
9 people who have been so-called pod bosses that never
10 earned that position, that never earned that
11 position. To me, in order to be a shot-caller or a
12 pod boss, you had to at least put in work to do it.

13 Q. And that's your idea of being -- a good
14 requirement for being a pod boss?

15 A. Yeah.

16 Q. And you talked about the paperwork and the
17 discussion at the South that you had with Mario
18 Rodriguez and others, and talking about going down
19 south, and how there was a rumor that there was
20 paperwork already down there. Is the paperwork
21 important in order for the hit to be carried out?

22 A. That's the only way it can be carried out.

23 Q. And as you mentioned, Mario Rodriguez was
24 a soldier. Would he take orders from leaders since
25 he wasn't a leader at that time?

1 A. Yeah.

2 Q. Would he have to take --

3 A. He would have to. I mean, yeah, he would
4 have to. In other words, like, okay, me being a
5 shot-caller, somebody needs to earn their bones, I
6 send them on a mission. He didn't do it, then we
7 take him out. You do him or we do you.

8 Q. And that's the way the SNM -- it's the
9 motto for the SNM?

10 A. Yes.

11 MS. ARMIJO: May have a moment, Your
12 Honor?

13 THE COURT: You may.

14 MS. ARMIJO: Nothing further. Thank you.

15 THE COURT: Thank you, Ms. Armijo.

16 All right. Mr. Martinez, you may step
17 down.

18 Is there any reason that Mr. Martinez
19 cannot be excused from the proceedings? Ms. Armijo?

20 MS. ARMIJO: No, Your Honor.

21 THE COURT: Anybody from the defendants
22 have any objection to him being excused?

23 MS. DUNCAN: No, Your Honor.

24 THE COURT: Not hearing any objection from
25 the defendants, you're excused from the proceedings.

1 Thank you for your testimony.

2 All right. Ms. Armijo, Mr. Castellano, do
3 you have your next witness or evidence?

4 MR. CASTELLANO: Yes, Your Honor. The
5 United States calls Roy Martinez.

6 THE COURT: Let's call it for the evening
7 here.

8 Seven years ago, on Valentine's Day, my
9 daughter was expecting our first grandson. And she
10 didn't want him to be born on Valentine's Day. I
11 don't know why. But the mother kind of gets to
12 decide those issues. So he was born today. So I'm
13 going to slip out of here and see if I can call him
14 before he goes to bed in Texas, and wish him a happy
15 birthday.

16 Y'all have a good evening. We will see
17 you tomorrow at 8:30. All rise.

18 (The jury left the courtroom.)

19 THE COURT: Mr. Martinez was in the
20 restroom, so I didn't know how long that was going
21 to take.

22 MR. BACA: It's the nerves.

23 THE COURT: Y'all have a good evening.

24 (The Court stood in recess.)
25

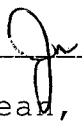
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2 STATE OF NEW MEXICO

3
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5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages
8 constitute a true transcript of proceedings had
9 before the said Court, held in the District of New
10 Mexico, in the matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 4th day of February, 2019.

13
14 
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